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PREPARATIONS FOR A HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES LEGISLATION

Handbook on restrictive business practices legislation

Note by the UNCTAD secretariat

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UNITED KINGDOM Competition legislation:

(1) Fair Trading Act 1973
(2) Restrictive Trade Practices Act 1976
(3) Resale Prices Act 1976
(4) Competition Act 1980

INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, under Section F.6 (c), provides for compilation of a Handbook on Restrictive Business Practices Legislation.

2. The Intergovernmental Group of Experts on Restrictive Business Practices, in the agreed decisions and conclusions adopted at its sixth session, requested the UNCTAD secretariat to continue compiling the Handbook, as carried out so far (TD/B/RBP/33 and TD/B/RBP/42), taking into account the comments made by regional groups at the session. Further compilations of the Handbook were submitted to the seventh and eighth sessions of the Group (respectively, TD/B/RBP/49 and TD/B/RBP/58 and Add.1).

3. At its eighth session, the Intergovernmental Group of Experts, in its agreed decisions and conclusions, requested the UNCTAD secretariat to make a further compilation of the Handbook on Restrictive Business Practices Legislation (TD/B/1236-TD/B/RBP/67, annex I) for the ninth session of the Group and for the Review Conference.

4. Accordingly, the UNCTAD secretariat prepared a note for the ninth session of the Group (document TD/RBP/71) which contained commentaries on and texts of restrictive business practices legislation in Germany and Finland.

5. Furthermore, the secretariat prepared a note (TD/RBP/CON.3/5 and its extract), for the Second United Nations Conference to Review All Aspects of the Set of Principles and Rules, held from 26 November to 7 December 1990. The note and the extract contain commentaries received from Denmark, Poland, Spain and the United States of America. Texts of the RBP laws of these countries are reproduced in the annex to that note in the languages in which they were received.

6. In its resolution on "Strengthening the implementation of the set," the Conference requested States to supply to the UNCTAD secretariat, inter alia, information concerning new restrictive business practice legislation or amendments to existing laws, with a copy of the legislation or amendments. This is to be transmitted annually or as the information becomes available, if appropriate, preferably in one of the official languages of the United Nations. It also requested that the UNCTAD secretariat, on the basis of the information thus received and other available sources, inter alia, complete and update the Handbook on Restrictive Business Practices Legislation.

7. The UNCTAD secretariat prepared a note (TD/B/RBP/82) containing a commentary transmitted by Norway on: the Price Act 1953, Resale Price Maintenance 1957 and Horizontal Price Cooperation 1960, and reproduced in the annex the texts of these laws. Likewise the same annex contains the text of Act No. 8, 158, 1991, on Provisions for Protection of Competition and Other Measures of Brazil.

8. Thus, to date, the UNCTAD secretariat has issued notes containing commentaries and the texts of restrictive business practices legislation of 18 countries: Brazil, Canada, Chile, Denmark, Germany, Finland, France,

Kenya, Pakistan, Poland, Portugal, Republic of Korea, Norway, Spain, Sri Lanka, Sweden, United Kingdom and United States of America.

9. The Secretary-General of UNCTAD, in his note dated 26 March 1992 (TD/420/8(5)Q), requested States which so far had not done so, or which had introduced new or amending RBP legislation since their last communication, to provide the UNCTAD secretariat with information on their relevant legislation, court decisions and comments, on the basis of the format supplied (see below). In order to facilitate the reproduction of texts of legislation in more than one official language of the United Nations, States were invited, as called for by the Intergovernmental Group, to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

10. The UNCTAD secretariat is grateful to the Governments that have contributed the material requested for the compilation of the Handbook, and once again requests States which have not yet done so, or which have amended or enacted new legislation, to supply texts of their legislation, together with commentaries, along the lines of the format.

FORMAT FOR CONTRIBUTIONS TO THE HANDBOOK

A. Description of the reasons for the introduction of the legislation.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(a) The type of control, for example: outright prohibition, prohibition in principle, or examination on a case-by-case basis;

(b) The extent to which the practices, acts or behaviour in Section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example, controls concerning misleading advertising.

D. Description of the scope of application of the legislation, indicating:

(a) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

(b) Whether it applies to all practices, acts or behaviour having effects on that country, irrespective of where they are committed;

(c) Whether it is dependent upon the existence of an agreement, or of that agreement being put into effect.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body(ies).

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices.

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof.

COMMENTARY BY THE GOVERNMENT OF THE UNITED KINGDOM ON ITS COMPETITION LEGISLATION

Reasons for the introduction of competition legislation in the United Kingdom

11. The main developments in the introduction of United Kingdom competition law took place after 1945, although since about 1200, the courts had considered the effects of restrictions on competition under the common law doctrine on "restraint of trade" which made such contracts unenforceable at law. The Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 was introduced to help stem the adverse effects of monopolies and restrictive practices for which there had been no statutory control. Subsequent legislation was then introduced and that currently in operation is set out in paragraphs 13-47 below.

Evolution of the objectives of the legislation

12. The United Kingdom sees competition as an essential element in the efficient working of markets encouraging enterprise, productivity and choice. In doing so, it enables consumers to buy the goods they want at the best possible price. By encouraging efficiency in industry, competition in the domestic market also contributes to international competitiveness. The overall aim of United Kingdom competition policy is to encourage and enhance the competitive process. When that process is adversely affected, the law provides a number of ways in which the situation can be examined and, if necessary, altered.

13. Competition is not regarded as an end in itself. With some exceptions, there is no assumption that a particular type of action or a particular situation which reduces competition is wrong in itself. The legislation provides for case-by-case examination and only when a matter is found to be, or likely to be, against the public interest can it be prohibited. The term "the public interest" is a broad one, although the statutes do provide some guidance on the matters that should be taken into consideration. These are not limited to consumer interests, although they are certainly of major importance. In general it may be assumed that the fostering of competition will promote both the interests of consumers and any wider public interest.

Practices and their control and enforcement under United Kingdom competition legislation

Monopolies

14. Under the Fair Trading Act 1973, a monopoly is defined first as a situation where a company supplies or purchases 25 per cent or more of all the goods or services of a particular type in the United Kingdom or in a defined part of it - local monopolies can therefore be examined. The Act also defines a complex monopoly as a situation where a group of companies that together have 25 per cent of the market all behave in some way that affects competition. Complex monopolies can exist even if the companies involved do not have an agreement to cooperate.

15. There is no assumption that monopolies are wrong in themselves. The 1973 Act simply defines situations where it is possible that market power could be misused and recognizes that this in turn could be contrary to the public interest. It is for the Monopolies and Mergers Commission (MMC) to say what is and what is not in the public interest.

16. The Director General of Fair Trading (DGFT) keeps a constant eye on British industry, examining the activities of major companies, looking at specific markets and evaluating allegations of monopoly abuse reported to his Office. At this stage, the DGFT conducts only informal inquiries. On the information available to him, and assuming prima facie evidence of a monopoly situation as defined, he may decide to refer the case to the MMC for investigation (although, in some cases, he may accept assurances from companies involved that they will change their practices).

17. If the DGFT decides to refer the case to the MMC, he does not specify the names of particular companies or, usually what practices the Commission should investigate. Instead, he draws the MMC's attention to a market as a whole, asks them to establish whether a monopoly situation exists and, if so, in whose favour and whether a monopolist is attempting to exploit the situation. But a reference may ask the MMC to look at one specific practice in a market - such as pricing policy. They will then investigate and submit a report to the Secretary of State for Trade and Industry with recommendations for remedial action if necessary. With the advice of the DGFT, the Secretary of State decides upon the appropriate course of action. He can either make an order to prevent further detriment or ask the DGFT to obtain undertakings from those involved to remedy the situation. If the second route is chosen, the DGFT will be responsible both for obtaining the undertakings and for ensuring that they are put into effect.

Anti-competitive practices

18. The prevention of practices that have adverse effects on competition is the aim of the Competition Act 1980. The Act can be seen as a supplement to the Fair Trading Act, offering a way of investigating a particular practice of a particular company, rather than a market as whole.

19. Under the Competition Act, an anti-competitive practice is defined as any practice that has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition. It is not the nature of the practice itself but its effect on competition that is the crucial factor. Practices that may be acceptable in one market where competition is strong may be unacceptable in another where there is less competitive activity. The decision on whether a practice is anti-competitive thus rests on the position of a particular company in its market. As a result, it is impossible to specify practices that are always anti-competitive.

20. In general, it is recognized that the ability to influence the market depends on the "market power" of the company concerned. Market power can exist for a wide variety of reasons but typically it can be derived from factors such as a substantial share of a market, possession of a leading brand name, significant barriers to entry to the market and the possession of intellectual property rights such as patents or copyright.

21. Companies are excluded from the provisions of the 1980 Act if they have a turnover of less than £5 million - unless they have 25 per cent or more of any market in the United Kingdom.

22. Information on the possible existence of an anti-competitive practice comes from complaints from trade and industry as well as the DGFT's regular monitoring of commercial activity. Once a possible case has been identified, the DGFT announces the start of an investigation by issuing a public notice to that effect, informing the Secretary of State. The DGFT can require any relevant person to provide documentation or other evidence necessary for the investigation. He must then produce a report stating whether he believes the practice to be anti-competitive. If the report concludes that a practice is anti-competitive in effect, the DGFT has two possible courses of action.

23. First, the practice can be referred to the MMC who must decide whether the practice is anti-competitive and, if so, whether it operates against the public interest. Unlike a monopoly reference, this kind of reference (known as a competition reference) will specify the company involved, the goods or services to which it relates and the practice under investigation. The MMC can then make recommendations to the Secretary of State who, with the advice of the DGFT, can either make an order to amend or end the practice or ask the DGFT to obtain undertakings to that effect.

24. Secondly, the DGFT, during the period before a reference is made, can consider undertakings to alter or abandon the practice. If these undertakings are acceptable, the DGFT need not refer the case to the MMC. Where the DGFT accepts undertakings or where the Secretary of State makes an order concerning an anti-competitive practice, the DGFT is responsible for ensuring compliance.

Resale Price Maintenance

25. Resale price maintenance is unlawful under the Resale Prices Act 1976 except for goods granted an exemption. Goods exempted at present are books and pharmaceuticals.

26. Under the 1976 Act, agreements between suppliers and dealers to establish minimum prices are void and it is unlawful to include or enforce such a clause in an agreement. It is also unlawful to withhold supplies or to offer less favourable terms to dealers which the supplier believes to be responsible for selling below a minimum resale price or likely to do so. A supplier is, however, entitled to withhold goods from a dealer which is pricing them as "loss leaders" as defined in the Act.

27. The Act applies exclusively to the sale of goods. The supply of services is not subject to its provisions. There is no prohibition on setting the maximum price at which a dealer can sell the goods involved, nor on recommending a resale price.

28. In following up complaints of alleged breaches of the Act from trade, industry and the public, the DGFT has the power to seek a court injunction ordering the parties involved to dissolve any minimum resale price agreement. A dealer adversely affected by the operation of such an agreement can also sue the parties involved for damages.

29. It is, however, more usual for the DGFT to obtain an assurance from those imposing minimum prices that they will adhere to the conditions of the Act. Obtaining such assurances does not prevent the DGFT from seeking an injunction at a later date if he is not satisfied that the parties are working within the limits of the assurances they have given to him.

Mergers

30. Under the Fair Trading Act 1973, a merger is said to take place when two or more companies "cease to be distinct". This can happen even if the majority of the shareholdings in the companies concerned remain in separate hands. For example, the purchase of a minority stake in a company that enabled the purchaser to influence the policy of that company would come within the definition of the term merger.

31. The 1973 Act lays down two tests to determine whether a particular merger is liable to investigation:

(a) The assets test:

That the total gross assets of the company to be taken over exceed £30 million in value.

(b) The market share test:

That, as a result of the merger, 25 per cent or more of the supply or purchase of goods or services of a particular description in the United Kingdom or a substantial part of it comes under the control of the merging enterprise.

Satisfying one or both of these tests will qualify a merger for examination and possible reference to the MMC, provided that at least one of the enterprises is in the United Kingdom, or under the control of a United Kingdom company.

32. The 1973 Act does not assume that mergers are desirable or otherwise. Cases are examined individually to establish their likely impact on the public interest.

33. Newspaper mergers are dealt with differently. If the merger involves publications with a combined circulation of more than 500,000 copies, the Secretary of State's permission is required before it can proceed, and generally he is obliged to make a reference to the Commission.

34. As in the case of monopolies, the DGFT monitors the activity of British industry to identify mergers that have taken place or are about to take place. While there is no legal obligation on companies to inform the DGFT of their merger plans, in practice many do. The Companies Act 1989 also introduced a formal procedure for companies to pre-notify a merger to the DGFT if they wish to do so; such pre-notification offers the prospect of rapid clearance of straightforward cases.

35. Once the DGFT becomes aware of a merger, his first task is to carry out a brief preliminary inquiry looking at the possible effects on competition and other matters of public interest. If there seems to be reasonable grounds for believing that the merger could have a detrimental effect on the public interest, the DGFT can advise the Secretary of State to refer the case to the MMC. Under the 1989 Companies Act, the DGFT is also empowered to accept binding undertakings from the company involved to avoid the necessity of a reference.

36. A reference by the Secretary of State starts a detailed examination by the MMC which must decide what effect the merger might have on the public interest. In the case of completed mergers, the DGFT will seek undertakings from the parties not to integrate their businesses. If the merger involves the purchase of a publicly quoted company, the non-statutory City Code on Takeovers and Mergers requires that the bid should lapse at this point although it can be revived following the Commission's report.

37. After taking evidence from all concerned, the MMC must decide whether the merger operates or can be expected to operate against the public interest. If they conclude that it does not operate against the public interest, the merger or bid can go ahead. If they conclude that the merger is against the public interest, they will normally make recommendations to the Secretary of State as to how this situation can be prevented. This can involve recommendations that the Secretary of State use his powers to order divestment of shares or assets or impose conditions on the merger.

38. The Secretary of State is not bound to accept these recommendations and, in consultation with the DGFT, will make the final decision on what action is appropriate. Usually, the DGFT will obtain the necessary undertakings from the companies involved but it is also open to the Secretary of State to make an order. The DGFT will then be responsible for ensuring compliance with the undertakings.

Restrictive Trade Practices

39. Agreements which involve restrictions on prices or charges, on market shares, on the terms and conditions on which people conduct business, the geographical areas of business and the persons with whom business can be carried out are the sort of restrictions likely to make them registrable under the Restrictive Trade Practices Act 1976. In the case of goods agreements, other common restrictions are on the quantity or description of goods to be produced, the manufacturing process to be used and the amount of goods to be manufactured. These are also likely to be registrable. The same applies to service agreements if they place restrictions on the extent to which services are made available and the form in which those services are made available.

40. Agreements can take any form including the spoken word and do not have to be legally enforceable or acted upon to come under the terms of the Act.

41. It is the general duty of the DGFT to refer registrable agreements to the Restrictive Practices Court which will strike down any restrictions found to be against the public interest.

42. Within this overall framework, the legislation excludes some agreements from the need to be registered. Agreements authorized by statute or dealing with most trade mark and copyright issues are excluded. The Secretary of State can also exclude some agreements as long as they fulfil certain conditions. Approval can be given if the restrictive agreements help to promote a scheme of substantial importance to the national economy which would not be possible without those agreements. This provision has rarely been used, however.

43. In addition, agreements within some professions such as the clergy, the law, medicine, auditing and surveying do not have to be registered. Agreements concerned with international air and sea transport may also be exempt.

44. Certain restrictions can be disregarded. These include conditions which are concerned only with the treatment of the goods or services supplied under the agreement and which do not impose conditions on the sale of other similar goods or services. Restrictions designed to ensure that the parties conform to British Standards Institution criteria can also be disregarded.

45. Details of all registrable agreements must be sent to the DGFT before they take effect or within three months of their being made, whichever is the sooner. Failure to do so will invalidate any restrictive parts of the agreement and anyone adversely affected can sue for damages.

46. The DGFT will examine each agreement sent to his Office on its merits and decide, on the basis of legal advice, whether it has to be registered. If the agreement meets the criteria for registration, the DGFT is required, with some important exceptions, to refer the case to a court specifically set up to examine restrictive agreements - the Restrictive Practices Court. The court will examine the case and determine whether the agreement is in the public interest. The onus is on the parties to demonstrate that the agreement is beneficial, using any of the possible benefits set out in the Act - the "gateways". If the court decides that the restrictions are not in the public interest, it will order them to be struck down. Few agreements have been accepted by the court as operating in the public interest.

47. The DGFT, however, has the discretion to advise the Secretary of State that a reference to the court is not necessary if the restrictions are too insignificant to warrant examination by the court. He may himself decide against court action if the restrictions have already ceased or if they are consistent with European Community decisions. The most likely reason for not referring an agreement to the court is that the restrictions are too insignificant to warrant examination. A large proportion of reported cases are dealt with in this way.

48. If agreements are either deliberately or inadvertently not sent to his Office for registration, the DGFT can issue a notice requiring those named to reveal the details of any agreement made between them. Such agreements are almost invariably referred to the court with the aim of seeking an order to

strike down any part of the agreement that is unlawfully restrictive and prevent similar agreements being made in future. The DGFT can bring proceedings for contempt if the parties continue or resume the restrictive practices.

Cooperation/procedures for resolving disputes with other countries

49. The United Kingdom continues to make use of the 1986 OECD Council Recommendation concerning cooperation between member countries on restrictive business practices affecting international trade.

Other legislation concerned with competition

50. The following Acts also place responsibilities on the DGFT with regard to competition in certain market sectors: the Financial Services Act 1986, the Companies Act 1989, the Courts and Legal Services Act 1990, and the Broadcasting Act 1990.

Consumer protection

51. Under the Fair Trading Act 1973, the DGFT also has responsibility for protection of consumers. Other acts which involve the DGFT in consumer protection are the Consumer Credit Act 1974, the Estate Agents Act 1979 and the Control of Misleading Advertisement Regulations 1988.

Bibliography

52. The following is a bibliography citing sources of legislation:

(a) Principal United Kingdom legislation in respect of competition

Competition Act 1980
Electricity Act 1989
Fair Trading Act 1973
Financial Services Act 1986
Gas Act 1986
Resale Prices Act 1976
Restrictive Trade Practices Act 1976
Telecommunications Act 1984

(All texts are available from Her Majesty's Stationery Office)

(b) Explanatory publications and booklets

Anti-Competitive Practices: a guide to the provisions of the Competition Act 1980 (Office of Fair Trading)

Restrictive Trade Practices: provisions of the Restrictive Trade Practices Act 1976 (Office of Fair Trading)

Mergers: a guide to the procedures under the Fair Trading Act 1973 (Office of Fair Trading)

Cartels - Detection and Remedies: a guide for purchasers (Office of Fair Trading)

An Outline of United Kingdom Competition Policy (Office of Fair Trading)

Monopolies and Mergers Commission - The Role of the Commission (Third Edition)

Competition Policy - How it Works (The Department of Trade and Industry)

ANNEX

UNITED KINGDOM - Competition legislation:

(1) Fair Trading Act 1973 (Chapter 41)

(2) Restrictive Trade Practices Act 1976 (Chapter 34)

(3) Resale Prices Act 1976 (Chapter 53)

(4) Competition Act 1980 (Chapter 21)

Fair Trading Act 1973

CHAPTER 41

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Fair Trading Act 1973

CHAPTER 41

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Schedule 11—Transitional provisions and savings.
Schedule 12—Enactments amended.
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c. 41

ELIZABETH II

Fair Trading Act 1973

1973 CHAPTER 41

An Act to provide for the appointment of a Director General of Fair Trading and of a Consumer Protection Advisory Committee, and to confer on the Director General and the Committee so appointed, on the Secretary of State, on the Restrictive Practices Court and on certain other courts new functions for the protection of consumers; to make provision, in substitution for the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 and the Monopolies and Mergers Act 1965, for the matters dealt with in those Acts and related matters, including restrictive labour practices; to amend the Restrictive Trade Practices Act 1956 and the Restrictive Trade Practices Act 1968, to make provision for extending the said Act of 1956 to agreements relating to services, and to transfer to the Director General of Fair Trading the functions of the Registrar of Restrictive Trading Agreements; to make provision with respect to pyramid selling and similar trading schemes; to make new provision in place of section 30(2) to (4) of the Trade Descriptions Act 1968; and for purposes connected with those matters. [25th July 1973]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

INTRODUCTORY

Director General of Fair Trading.

1.—(1) The Secretary of State shall appoint an officer to be known as the Director General of Fair Trading (in this Act referred to as " the Director ") for the purpose of performing

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the functions assigned or transferred to the Director by or under this Act.

(2) An appointment of a person to hold office as the Director shall not be for a term exceeding five years; but previous appointment to that office shall not affect eligibility for re-appointment.

(3) The Director may at any time resign his office as the Director by notice in writing addressed to the Secretary of State; and the Secretary of State may remove any person from that office on the ground of incapacity or misbehaviour.

(4) Subject to subsections (2) and (3) of this section, the Director shall hold and vacate office as such in accordance with the terms of his appointment.

(5) The Director may appoint such staff as he may think fit, subject to the approval of the Minister for the Civil Service as to numbers and as to terms and conditions of service.

(6) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

General functions of Director.

2.—(1) Without prejudice to any other functions assigned or transferred to him by or under this Act, it shall be the duty of the Director, so far as appears to him to be practicable from time to time,—

(*a*) to keep under review the carrying on of commercial activities in the United Kingdom which relate to goods supplied to consumers in the United Kingdom or produced with a view to their being so supplied, or which relate to services supplied for consumers in the United Kingdom, and to collect information with respect to such activities, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, practices which may adversely affect the economic interests of consumers in the United Kingdom, and

(*b*) to receive and collate evidence becoming available to him with respect to such activities as are mentioned in the preceding paragraph and which appears to him to be evidence of practices which may adversely affect the interests (whether they are economic interests or interests with respect to health, safety or other matters) of consumers in the United Kingdom.

(2) It shall also be the duty of the Director, so far as appears to him to be practicable from time to time, to keep under review the carrying on of commercial activities in the United Kingdom, and to collect information with respect to those activities, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, monopoly situations or uncompetitive practices.

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(3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State to do so,—

(*a*) to give information and assistance to the Secretary of State with respect to any of the matters in respect of which the Director has any duties under subsections (1) and (2) of this section, or

(*b*) subject to the provisions of Part II of this Act in relation to recommendations under that Part of this Act, to make recommendations to the Secretary of State as to any action which in the opinion of the Director it would be expedient for the Secretary of State or any other Minister to take in relation to any of the matters in respect of which the Director has any such duties.

(4) It shall also be the duty of the Director to have regard to evidence becoming available to him with respect to any course of conduct on the part of a person carrying on a business which appears to be conduct detrimental to the interests of consumers in the United Kingdom and (in accordance with the provisions of Part III of this Act) to be regarded as unfair to them, with a view to considering what action (if any) he should take under Part III of this Act.

(5) It shall be the duty of the Director to have regard to the needs of regional development and to the desirability of dispersing administrative offices from London in making decisions on the location of offices for his staff.

Consumer Protection Advisory Committee.

3.—(1) There shall be established an advisory committee to be called the Consumer Protection Advisory Committee (in this Act referred to as " the Advisory Committee ") for the purpose of performing the functions assigned to that Committee by Part II of this Act.

(2) Subject to subsection (6) of this section, the Advisory Committee shall consist of not less than ten and not more than fifteen members, who shall be appointed by the Secretary of State.

(3) The Secretary of State may appoint persons to the Advisory Committee either as full-time members or as part-time members.

(4) Of the members of the Advisory Committee, the Secretary of State shall appoint one to be chairman and one to be deputy chairman of the Advisory Committee.

(5) In appointing persons to be members of the Advisory Committee, the Secretary of State shall have regard to the need for securing that the Advisory Committee will include—

(*a*) one or more persons appearing to him to be qualified to advise on practices relating to goods supplied to con-

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sumers in the United Kingdom or produced with a view to their being so supplied, or relating to services supplied for consumers in the United Kingdom, by virtue of their knowledge of or experience in the supply (whether to consumers or not) of such goods or by virtue of their knowledge of or experience in the supply of such services;

(*b*) one or more persons appearing to him to be qualified to advise on such practices as are mentioned in the preceding paragraph by virtue of their knowledge of or experience in the enforcement of the Weights and Measures Act 1963 or the Trade Descriptions Act 1968 or other similar enactments; and

1963 c. 31.
1968 c. 29.

(*c*) one or more persons appearing to him to be qualified to advise on such practices by virtue of their knowledge of or experience in organisations established, or activities carried on, for the protection of consumers.

(6) The Secretary of State may by order made by statutory instrument increase the maximum number of members of the Advisory Committee to such number as he may think fit.

(7) The provisions of Schedule 2 to this Act shall have effect with respect to the Advisory Committee.

The Monopolies and Mergers Commission.
1948 c. 66.

4.—(1) The Commission established under section 1 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 by the name of the Monopolies and Restrictive Practices Commission, and subsequently renamed the Monopolies Commission, shall as from the commencement of this Act be known as the Monopolies and Mergers Commission, and shall continue to exist by that name for the purpose of performing the functions assigned to that Commission (in this Act referred to as " the Commission ") by or under this Act.

(2) There shall be not less than ten and (subject to the next following subsection) not more than twenty-five regular members of the Commission, who shall be appointed by the Secretary of State.

(3) The Secretary of State may by order made by statutory instrument increase the maximum number of regular members of the Commission to such number as he may think fit.

(4) The provisions of Schedule 3 to this Act shall have effect with respect to the Commission.

Principal functions of Commission.

5.—(1) Without prejudice to any other functions assigned to the Commission by or under this Act, it shall be the duty of the Commission, subject to and in accordance with the following provisions of this Act, to investigate and report on any question which may be referred to the Commission under this Act—

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(*a*) with respect to the existence, or possible existence, of a monopoly situation, or

(*b*) with respect to a transfer of a newspaper or of newspaper assets (within the meaning of Part V of this Act), or

(*c*) with respect to the creation, or possible creation, of a merger situation qualifying for investigation (within the meaning of Part V of this Act).

(2) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference made to them under this Act, to give to the Commission—

(*a*) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request, and

(*b*) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,

and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.

(3) In this Act " monopoly reference " means any reference to the Commission under this Act which falls within paragraph (*a*) of subsection (1) of this section; " merger reference " (subject to section 63 of this Act) means any reference to the Commission under this Act which falls within paragraph (*b*) or paragraph (*c*) of that subsection; and " monopoly situation " (except in sections 6 to 8 of this Act) means circumstances in which, in accordance with the following provisions of this Part of this Act, a monopoly situation is for the purposes of this Act to be taken to exist in relation to any matters specified in section 6(1), section 7(1) or section 8 of this Act.

Monopoly situation in relation to supply of goods.

6.—(1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to the supply of goods of any description in the following cases, that is to say, if—

(*a*) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by one and the same person, or are supplied to one and the same person, or (*b*) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by members of one and the same group of interconnected bodies corporate, or are supplied to members of one and the same group of interconnected bodies corporate, or

(*c*) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by members of one and the same group consisting of two or more such persons as are mentioned in subsection (2) of this section, or are supplied to members of one and the same group consisting of two or more such persons, or

(*d*) one or more agreements are in operation, the result or collective result of which is that goods of that description are not supplied in the United Kingdom at all.

(2) The two or more persons referred to in subsection (1)(*c*) of this section, in relation to goods of any description, are any two or more persons (not being a group of interconnected bodies corporate) who whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the production or supply of goods of that description, whether or not they themselves are affected by the competition and whether the competition is between persons interested as producers or suppliers or between persons interested as customers of producers or suppliers.

Monopoly situation in relation to supply of services.

7.—(1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to the supply of services of any description in the following cases, that is to say, if—

(*a*) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by one and the same person, or supply for one and the same person, or

(*b*) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by members of one and the same group of interconnected bodies corporate, or supply for members of one and the same group of interconnected bodies corporate, or

(*c*) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by members of one and the same group consisting of two or more such persons as are mentioned in subsection (2) of this section, or supply for members of one and the same group consisting of two or more such persons, or

(*d*) one or more agreements are in operation, the result or collective result of which is that services of that description are not supplied in the United Kingdom at all.

(2) The two or more persons referred to in subsection (1)(*c*) of this section, in relation to services of any description, are any two or more persons (not being a group of interconnected bodies corporate) who whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the supply of services of that description, whether or not they themselves are affected by the competition, and whether the competition is between persons interested as persons by whom, or as persons for whom, services are supplied.

(3) In the application of this section for the purposes of a monopoly reference, the Commission, or the person or persons making the reference, may, to such extent as the Commission, or that person or those persons, think appropriate in the circumstances, treat services as supplied in the United Kingdom if the person supplying the services—

(*a*) has a place of business in the United Kingdom, or

(*b*) controls the relevant activities from the United Kingdom, or

(*c*) being a body corporate, is incorporated under the law of Great Britain or of Northern Ireland,

and may do so whether or not those services would otherwise be regarded as supplied in the United Kingdom.

Monopoly situation in relation to exports.

8.—(1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to exports of goods of any description from the United Kingdom in the following cases, that is to say, if—

(*a*) at least one-quarter of all the goods of that description which are produced in the United Kingdom are produced by one and the same person, or

(*b*) at least one-quarter of all the goods of that description which are produced in the United Kingdom are produced by members of one and the same group of interconnected bodies corporate;

and in those cases a monopoly situation shall for the purposes of this Act be taken to exist both in relation to exports of goods of that description from the United Kingdom generally and in relation to exports of goods of that description from the United Kingdom to each market taken separately.

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(2) In relation to exports of goods of any description from the United Kingdom generally, a monopoly situation shall for the purposes of this Act be taken to exist if—

- (*a*) one or more agreements are in operation which in any way prevent or restrict, or prevent, restrict or distort competition in relation to, the export of goods of that description from the United Kingdom, and
- (*b*) that agreement is or (as the case may be) those agreements collectively are operative with respect to at least one-quarter of all the goods of that description which are produced in the United Kingdom.

(3) In relation to exports of goods of any description from the United Kingdom to any particular market, a monopoly situation shall for the purposes of this Act be taken to exist if—

- (*a*) one or more agreements are in operation which in any way prevent or restrict, or prevent, restrict or distort competition in relation to, the supply of goods of that description (whether from the United Kingdom or not) to that market, and
- (*b*) that agreement is or (as the case may be) those agreements collectively are operative with respect to at least one-quarter of all the goods of that description which are produced in the United Kingdom.

Monopoly situation limited to part of United Kingdom.

9.—(1) For the purposes of a monopoly reference, other than a reference relating to exports of goods from the United Kingdom, the person or persons making the reference may, if it appears to him or them to be appropriate in the circumstances to do so, determine that consideration shall be limited to a part of the United Kingdom.

(2) Where such a determination is made, then for the purposes of that monopoly reference the provisions of sections 6 and 7 of this Act, or such of those provisions as are applicable for those purposes, shall have effect as if, wherever those provisions refer to the United Kingdom, they referred to that part of the United Kingdom to which, in accordance with that determination, consideration is to be limited.

(3) The preceding provisions of this section shall have effect subject to subsection (4) of section 50 of this Act in cases to which that subsection applies.

Supplementary provisions relating to ss. 6 to 9.

10.—(1) In the application of any of the provisions of sections 6 to 9 of this Act for the purposes of a monopoly reference, those provisions shall have effect subject to the following provisions of this section.

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(2) No account shall for those purposes be taken of any provisions of an agreement in so far as they are provisions by virtue of which it is an agreement to which Part I of the Act of 1956 applies.

(3) In relation to goods or services of any description which are the subject of different forms of supply—

- (*a*) references in paragraphs (*a*) to (*d*) of subsection (1), and in subsection (2), of section 6 or in section 8(3) of this Act to the supply of goods, or
- (*b*) references in paragraphs (*a*) to (*d*) of subsection (1), and in subsection (2), of section 7 of this Act to the supply of services,

shall for those purposes be construed in whichever of the following ways the Commission, or the person or persons making the monopoly reference, think appropriate in all the circumstances, that is to say, as references to any of those forms of supply taken separately, to all those forms of supply taken together, or to any of those forms of supply taken in groups.

(4) For the purposes of subsection (3) of this section the Commission, or the person or persons making the monopoly reference in question, may treat goods or services as being the subject of different forms of supply whenever the transactions in question differ as to their nature, their parties, their terms or their surrounding circumstances, and the difference is one which, in the opinion of the Commission, or the person or persons making the reference, ought for the purposes of that subsection to be treated as a material difference.

(5) For the purposes of a monopoly reference made by the Director, subsections (3) and (4) of this section shall have effect subject to section 50(3) and (4) of this Act.

(6) In determining, for the purposes of a monopoly reference, whether the proportion of one-quarter mentioned in any provision of section 6, section 7 or section 8 of this Act is fulfilled with respect to goods or services of any description, the Commission, or the person or persons making the reference, shall apply such criterion (whether it be value or cost or price or quantity or capacity or number of workers employed or some other criterion, of whatever nature) or such combination of criteria as may appear to them or him to be most suitable in all the circumstances.

(7) The criteria for determining when goods or services can be treated, for the purposes of a monopoly reference, as goods or services of a separate description shall be such as the person or persons making the reference may think most suitable in the circumstances.

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(8) In construing the provisions of section 7(3) and section 9 of this Act and the provisions of subsections (1) to (7) of this section, the purposes of a monopoly reference shall be taken to include the purpose of enabling the Director, or the Secretary of State or any other Minister, to determine in any particular circumstances—

(*a*) whether a monopoly reference could be made under Part IV of this Act, and

(*b*) if so, whether in those circumstances such a reference could be made by the Director,

and references in those provisions to the person or persons making a monopoly reference shall be construed accordingly.

Meaning of "complex monopoly situation".

11.—(1) In this Act "complex monopoly situation" means circumstances in which, in accordance with the preceding provisions of this Act, a monopoly situation is for the purposes of this Act to be taken to exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, by reason that the condition specified in paragraph (*c*) or in paragraph (*d*) of section 6(1) or of section 7(1) of this Act is fulfilled, or that the conditions specified in subsection (2) or in subsection (3) of section 8 of this Act are fulfilled.

(2) Any reference in the preceding subsection to paragraph (*c*) or paragraph (*d*) of section 6(1) or of section 7(1) of this Act shall be construed as including a reference to that paragraph as modified by section 9(2) of this Act.

Powers of Secretary of State in relation to functions of Director.

12.—(1) The Secretary of State may give general directions indicating considerations to which the Director should have particular regard in determining the order of priority in which—

(*a*) matters are to be brought under review in the performance of his duty under section 2(1) of this Act, or

(*b*) classes of goods or services are to be brought under review by him for the purpose of considering whether a monopoly situation exists or may exist in relation to them.

(2) The Secretary of State may also give general directions indicating—

(*a*) considerations to which, in cases where it appears to the Director that a practice may adversely affect the interests of consumers in the United Kingdom, he should have particular regard in determining whether to make a recommendation to the Secretary of State under section 2(3)(*b*) of this Act, or

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(*b*) considerations to which, in cases where it appears to the Director that a consumer trade practice may adversely affect the economic interests of consumers in the United Kingdom, he should have particular regard in determining whether to make a reference to the Advisory Committee under Part II of this Act, or

(*c*) considerations to which, in cases where it appears to the Director that a monopoly situation exists or may exist, he should have particular regard in determining whether to make a monopoly reference to the Commission under Part IV of this Act.

(3) The Secretary of State, on giving any directions under this section, shall arrange for those directions to be published in such manner as the Secretary of State thinks most suitable in the circumstances.

PART II

REFERENCES TO CONSUMER PROTECTION ADVISORY COMMITTEE

General provisions

Meaning of "consumer trade practice".

13. In this Act "consumer trade practice" means any practice which is for the time being carried on in connection with the supply of goods (whether by way of sale or otherwise) to consumers or in connection with the supply of services for consumers and which relates—

(*a*) to the terms or conditions (whether as to price or otherwise) on or subject to which goods or services are or are sought to be supplied, or

(*b*) to the manner in which those terms or conditions are communicated to persons to whom goods are or are sought to be supplied or for whom services are or are sought to be supplied, or

(*c*) to promotion (by advertising, labelling or marking of goods, canvassing or otherwise) of the supply of goods or of the supply of services, or

(*d*) to methods of salesmanship employed in dealing with consumers, or

(*e*) to the way in which goods are packed or otherwise got up for the purpose of being supplied, or

(*f*) to methods of demanding or securing payment for goods or services supplied.

General provisions as to references to Advisory Committee.

14.—(1) Subject to sections 15 and 16 of this Act, the Secretary of State or any other Minister or the Director may refer to the Advisory Committee the question whether a consumer trade practice specified in the reference adversely affects the economic interests of consumers in the United Kingdom.

(2) The Secretary of State or any other Minister by whom a reference is made under this section shall transmit a copy of the reference to the Director.

(3) On any reference made to the Advisory Committee under this section the Advisory Committee shall consider the question so referred to them and shall prepare a report on that question and (except as otherwise provided by section 21(3) of this Act) submit that report to the person by whom the reference was made.

(4) Subject to the provisions of section 133 of this Act, it shall be the duty of the Director, where he is requested by the Advisory Committee to do so for the purpose of assisting the Committee in carrying out an investigation on a reference made to them under this section, to give to the Committee—

(a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and

(b) any other assistance which the Committee may require, and which it is within his power to give, in relation to any such matters.

(5) The Advisory Committee shall transmit to the Secretary of State a copy of every report which is made by them under this section to a person other than the Secretary of State, and shall transmit to the Director a copy of every report which is made by them under this section to a person other than the Director.

Exclusion from s. 14 in respect of certain services.

15. No reference under section 14 of this Act shall be made to the Advisory Committee by the Secretary of State or by any other Minister or by the Director if it appears to him—

(a) that the consumer trade practice in question is carried on in connection only with the supply of services of a description specified in Schedule 4 to this Act, and

(b) that a monopoly situation exists or may exist in relation to the supply of services of that description.

Restriction on references under s. 14 in respect of certain goods and services.

16.—(1) No reference under section 14 of this Act shall be made to the Advisory Committee by the Director except with the consent of the appropriate Minister, if it appears to the Director that the consumer trade practice in question—

(a) is carried on in connection only with the supply, by a body corporate to which this section applies, of goods or services of a description specified in Part I of Schedule 5 to this Act, or

(b) is carried on in connection only with the supply by such a body corporate of goods or services of a description specified in the first column of Part II of that Schedule, in so far as that supply falls within the entry relating to it in the second column of that Part of that Schedule.

(2) This section applies to any body corporate which fulfils the following conditions, that is to say—

(a) that the affairs of the body corporate are managed by its members, and

(b) that by virtue of an enactment those members are appointed by a Minister;

and in this section "Minister" includes a Minister of the Government of Northern Ireland, and "the appropriate Minister", in relation to a body corporate, means the Minister by whom members of that body corporate are appointed.

(3) The Secretary of State may by order made by statutory instrument vary any of the provisions of Schedule 5 to this Act, either by adding one or more further entries or by altering or deleting any entry for the time being contained in it; and any reference in this Act to that Schedule shall be construed as a reference to that Schedule as for the time being in force.

Reference to Advisory Committee proposing recommendation to Secretary of State to make an order.

17.—(1) This section applies to any reference made to the Advisory Committee by the Director under section 14 of this Act which includes proposals in accordance with the following provisions of this section.

(2) Where it appears to the Director that a consumer trade practice has the effect, or is likely to have the effect,—

(a) of misleading consumers as to, or withholding from them adequate information as to, or an adequate record of, their rights and obligations under relevant consumer transactions, or

(b) of otherwise misleading or confusing consumers with respect to any matter in connection with relevant consumer transactions, or

(c) of subjecting consumers to undue pressure to enter into relevant consumer transactions, or

(d) of causing the terms or conditions, on or subject to which consumers enter into relevant consumer transactions, to be so adverse to them as to be inequitable,

any reference made by the Director under section 14 of this Act with respect to that consumer trade practice may, if the Director thinks fit, include proposals for recommending to the Secretary of State that he should exercise his powers under the following provisions of this Part of this Act with respect to that consumer trade practice.

(3) A reference to which this section applies shall state which of the effects specified in subsection (2) of this section it appears to the Director that the consumer trade practice in question has or is likely to have.

(4) Where the Director makes a reference to which this section applies, he shall arrange for it to be published in full in the London, Edinburgh and Belfast Gazettes.

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(5) In this Part of this Act "relevant consumer transaction", in relation to a consumer trade practice, means any transaction to which a person is, or may be invited to become, a party in his capacity as a consumer in relation to that practice.

No such recommendation to be made except in pursuance of reference to which s. 17 applies.

18. The Director shall not make any recommendation to the Secretary of State to exercise his powers under the following provisions of this Part of this Act except by way of making a reference to the Advisory Committee to which section 17 of this Act applies.

Scope of recommendation proposed in reference to which s. 17 applies.

19.—(1) In formulating any proposals which, in accordance with the provisions of section 17 of this Act, are included in a reference to which that section applies, the Director shall have regard—

(*a*) to the particular respects in which it appears to him that the consumer trade practice specified in the reference may adversely affect the economic interests of consumers in the United Kingdom, and

(*b*) to the class of relevant consumer transactions, or the classes (whether being some or all classes) of such transactions, in relation to which it appears to him that the practice may so affect those consumers;

and the proposed recommendation shall be for an order making, in relation to relevant consumer transactions of that class or of those classes, as the case may be, such provision specified in the proposals as the Director may consider requisite for the purpose of preventing the continuance of that practice, or causing it to be modified, in so far as it may so affect those consumers in those respects.

(2) Without prejudice to the generality of the preceding subsection, for the purpose mentioned in that subsection any such proposals may in particular recommend the imposition by such an order of prohibitions or requirements of any description specified in Schedule 6 to this Act.

(3) In that Schedule, in its application to any such proposals, "the specified consumer trade practice" means the consumer trade practice specified in the reference in which the proposals are made, "specified consumer transactions" means transactions which are relevant consumer transactions in relation to that consumer trade practice and are of a description specified in the proposals, and "specified" (elsewhere than in those expressions) means specified in the proposals.

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Time-limit and quorum for report on reference to which s. 17 applies.

20.—(1) A report of the Advisory Committee on a reference to which section 17 of this Act applies shall not have effect, and no action shall be taken in relation to it under the following provisions of this Part of this Act, unless the report is made before the end of the period of three months beginning with the date of the reference or of such further period or periods (if any) as may be allowed by the Secretary of State.

(2) The Secretary of State shall not allow any further period for such a report except after consulting the Advisory Committee and considering any representations made by them with respect to the proposal to allow a further period.

(3) No such further period shall be longer than three months; but (subject to subsection (2) of this section) two or more further periods may be allowed in respect of the same reference.

(4) The quorum necessary for a meeting of the Advisory Committee held for the final settling of a report of the Committee on a reference to which section 17 of this Act applies shall be not less than two-thirds of the members of the Committee.

Report of Advisory Committee on reference to which s. 17 applies.

21.—(1) A report of the Advisory Committee on a reference to which section 17 of this Act applies shall state the conclusions of the Committee on the questions—

(*a*) whether the consumer trade practice specified in the reference adversely affects the economic interests of consumers in the United Kingdom, and

(*b*) if so, whether it does so by reason, or partly by reason, that it has or is likely to have such one or more of the effects specified in section 17(2) of this Act as are specified in the report.

(2) If, in their conclusions set out in such a report, the Advisory Committee find that the consumer trade practice specified in the reference does adversely affect the economic interests of consumers in the United Kingdom, and does so wholly or partly for the reason mentioned in subsection (1)(*b*) of this section, the report shall state whether the Committee—

(*a*) agree with the proposals set out in the reference, or

(*b*) would agree with those proposals if they were modified in a manner specified in the report, or

(*c*) disagree with the proposals and do not desire to suggest any such modifications.

(3) Every report of the Advisory Committee on a reference to which section 17 of this Act applies shall be made to the Secretary of State, and shall set out in full the reference on which it is made.

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Order in pursuance of report of Advisory Committee

Order of Secretary of State in pursuance of report on reference to which s. 17 applies.

22.—(1) The provisions of this section shall have effect where a report of the Advisory Committee on a reference to which section 17 of this Act applies has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the report states that the Committee—

(*a*) agree with the proposals set out in the reference, or

(*b*) would agree with those proposals if they were modified in a manner specified in the report.

(2) In the circumstances mentioned in the preceding subsection, the Secretary of State may, if he thinks fit, by an order made by statutory instrument make such provision as—

(*a*) in a case falling within paragraph (*a*) of the preceding subsection, is in his opinion appropriate for giving effect to the proposals set out in the reference, or

(*b*) in a case falling within paragraph (*b*) of that subsection, is in his opinion appropriate for giving effect either to the proposals as set out in the reference or to those proposals as modified in the manner specified in the report, as the Secretary of State may in his discretion determine.

(3) Any such order may contain such supplementary or incidental provisions as the Secretary of State may consider appropriate in the circumstances; and (without prejudice to the generality of this subsection) any such order may restrict the prosecution of offences under the next following section in respect of contraventions of the order where those contraventions also constitute offences under another enactment.

(4) No such order, and no order varying or revoking any such order, shall be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

enalties for ontravention of order under s. 22.

23. Subject to the following provisions of this Part of this Act, any person who contravenes a prohibition imposed by an order under section 22 of this Act, or who does not comply with a requirement imposed by such an order which applies to him, shall be guilty of an offence and shall be liable—

(*a*) on summary conviction, to a fine not exceeding £400;

(*b*) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

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Offences due to default of other person.

24. Where the commission by any person of an offence under section 23 of this Act is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

Defences in proceedings under s. 23.

25.—(1) In any proceedings for an offence under section 23 of this Act it shall, subject to subsection (2) of this section, be a defence for the person charged to prove—

(*a*) that the commission of the offence was due to a mistake, or to reliance on information supplied to him, or to the act or default of another person, an accident or some other cause beyond his control, and

(*b*) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) If in any case the defence provided by the preceding subsection involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing, giving such information identifying or assisting in the identification of that other person as was then in his possession.

(3) In proceedings for an offence under section 23 of this Act committed by the publication of an advertisement, it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under section 23 of this Act.

Limitation of effect of orders under s. 22.

26. A contract for the supply of goods or services shall not be void or unenforceable by reason only of a contravention of an order made under section 22 of this Act; and, subject to the provisions of section 33 of the Interpretation Act 1889 (which relates to offences under two or more laws), the provisions of this Part of this Act shall not be construed as—

1889 c. 63.

(*a*) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of such an order, or

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(*b*) affecting any restriction imposed by or under any other enactment, whether public, local or private, or

(*c*) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part of this Act.

Enforcement of orders

Enforcing authorities.

1963 c. 31.

27.—(1) It shall be the duty of every local weights and measures authority to enforce within their area the provisions of any order made under section 22 of this Act; and section 37 of the Weights and Measures Act 1963 (power of local authorities to combine) shall apply with respect to the functions of such authorities under this Part of this Act as it applies with respect to their functions under that Act.

(2) Nothing in subsection (1) shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

Power to make test purchases.

28. A local weights and measures authority may make, or may authorise any of their officers to make on their behalf, such purchases of goods, and may authorise any of their officers to obtain such services, as may be expedient for the purpose of determining whether or not the provisions of any order made under section 22 of this Act are being complied with.

Power to enter premises and inspect and seize goods and documents.

29.—(1) A duly authorised officer of a local weights and measures authority, or a person duly authorised in writing by the Secretary of State, may at all reasonable hours, and on production, if required, of his credentials, exercise the following powers, that is to say—

(*a*) he may, for the purpose of ascertaining whether any offence under section 23 of this Act has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;

(*b*) if he has reasonable cause to suspect that an offence under that section has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a business or employed in connection with a business to produce any books or documents relating to the business and may take copies of, or of any entry in, any such book or document;

(*c*) if he has reasonable cause to believe that such an offence has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;

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(*d*) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for such an offence;

(*e*) he may, for the purpose of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of an order made under section 22 of this Act are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.

(2) A person seizing any goods or documents in the exercise of his powers under this section shall inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being the proprietor's or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(3) If a justice of the peace, on sworn information in writing,—

(*a*) is satisfied that there is reasonable ground to believe either—

(i) that any goods, books or documents which a person has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under section 23 of this Act, or

(ii) that any offence under section 23 has been, is being or is about to be committed on any premises, and

(*b*) is also satisfied either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier, or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent, and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any such officer or other person as is mentioned in subsection (1) of this section to enter the premises, if need be by force.

In the application of this subsection to Scotland, "justice of the peace" shall be construed as including a sheriff and a magistrate.

(4) A person entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under subsection (3) of this section he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(5) Nothing in this section shall be taken to compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession.

Offences in connection with exercise of powers under s. 29.

30.—(1) Subject to subsection (6) of this section, any person who—

(*a*) wilfully obstructs any such officer or person as is mentioned in subsection (1) of section 29 of this Act acting in the exercise of any powers conferred on him by or under that section, or

(*b*) wilfully fails to comply with any requirement properly made to him by such an officer or person under that section, or

(*c*) without reasonable cause fails to give to such an officer or person so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Part of this Act,

shall be guilty of an offence.

(2) If any person, in giving any such information as is mentioned in subsection (1)(*c*) of this section, makes any statement which he knows to be false, he shall be guilty of an offence.

(3) If any person discloses to any other person—

(*a*) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of section 29 of this Act, or

(*b*) any information obtained by him under that section or by virtue of subsection (1) of this section,

he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

(4) If any person who is neither a duly authorised officer of a weights and measures authority nor a person duly authorised in that behalf by the Secretary of State purports to act as such under section 29 of this Act or under this section, he shall be guilty of an offence.

(5) Any person guilty of an offence under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding £50; and any person guilty of an offence under subsection (2), subsection (3) or subsection (4) of this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding £400;

(*b*) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(6) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or (where that person is married) the husband or wife of that person.

Notice of test.

31. Where any goods seized or purchased by a person in pursuance of this Part of this Act are submitted to a test, then—

(*a*) if the goods were seized, he shall inform any such person as is mentioned in section 29(2) of this Act of the result of the test;

(*b*) if the goods were purchased and the test leads to the institution of proceedings for an offence under section 23 of this Act, he shall inform the person from whom the goods were purchased, or, in the case of goods sold through a vending machine, the person mentioned in relation to such goods in section 29(2) of this Act, of the result of the test;

and where, as a result of the test, proceedings for an offence under section 23 of this Act are instituted against any person, he shall allow that person to have the goods tested on his behalf if it is reasonably practicable to do so.

Compensation for loss in respect of goods seized under s. 29.

32.—(1) Where in the exercise of his powers under section 29 of this Act a person seizes and detains any goods, and their owner suffers loss by reason of their being seized or by reason that the goods, during the detention, are lost or damaged or deteriorate, unless the owner is convicted of an offence under section 23 of this Act committed in relation to the goods, the appropriate authority shall be liable to compensate him for the loss so suffered.

(2) Any disputed question as to the right to or the amount of any compensation payable under this section shall be determined by arbitration and, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

PART II

(3) In this section " the appropriate authority "—

(*a*) in relation to goods seized by an officer of a local weights and measures authority, means that authority, and

(*b*) in any other case, means the Secretary of State.

Application of Part II to Northern Ireland.

33.—(1) It shall be the duty of the Ministry of Commerce for Northern Ireland to enforce in Northern Ireland the provisions of any order under section 22 of this Act.

(2) In the application of this Part of this Act to Northern Ireland—

(*a*) section 27 shall not apply;

(*b*) in sections 28 and 29, any reference to a local weights and measures authority shall be construed as a reference to the Ministry of Commerce for Northern Ireland, and the provisions of sections 30 to 32 shall be construed accordingly;

(*c*) in section 29(3), any reference to a justice of the peace shall be construed as a reference to a resident magistrate; and

1937 c. 8. (N.I.).

(*d*) the provisions of the Arbitration Act (Northern Ireland) 1937, except the provisions set out in Schedule 3 thereto, shall apply to an arbitration under section 32 of this Act as if the arbitration were pursuant to an arbitration agreement (as defined in section 30(1) of that Act).

PART III

ADDITIONAL FUNCTIONS OF DIRECTOR FOR PROTECTION OF CONSUMERS

Action by Director with respect to course of conduct detrimental to interests of consumers.

34.—(1) Where it appears to the Director that the person carrying on a business has in the course of that business persisted in a course of conduct which—

(*a*) is detrimental to the interests of consumers in the United Kingdom, whether those interests are economic interests or interests in respect of health, safety or other matters, and

(*b*) in accordance with the following provisions of this section is to be regarded as unfair to consumers,

the Director shall use his best endeavours, by communication with that person or otherwise, to obtain from him a satisfactory written assurance that he will refrain from continuing that course of conduct and from carrying on any similar course of conduct in the course of that business.

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(2) For the purposes of subsection (1)(*b*) of this section a course of conduct shall be regarded as unfair to consumers if it consists of contraventions of one or more enactments which impose duties, prohibitions or restrictions enforceable by criminal proceedings, whether any such duty, prohibition or restriction is imposed in relation to consumers as such or not and whether the person carrying on the business has or has not been convicted of any offence in respect of any such contravention.

(3) A course of conduct on the part of the person carrying on a business shall also be regarded for those purposes as unfair to consumers if it consists of things done, or omitted to be done, in the course of that business in breach of contract or in breach of a duty (other than a contractual duty) owed to any person by virtue of any enactment or rule of law and enforceable by civil proceedings, whether (in any such case) civil proceedings in respect of the breach of contract or breach of duty have been brought or not.

(4) For the purpose of determining whether it appears to him that a person has persisted in such a course of conduct as is mentioned in subsection (1) of this section, the Director shall have regard to either or both of the following, that is to say—

(*a*) complaints received by him, whether from consumers or from other persons;

(*b*) any other information collected by or furnished to him, whether by virtue of this Act or otherwise.

35. If, in the circumstances specified in subsection (1) of section 34 of this Act,—

Proceedings before Restrictive Practices Court.

(*a*) the Director is unable to obtain from the person in question such an assurance as is mentioned in that subsection, or

(*b*) that person has given such an assurance and it appears to the Director that he has failed to observe it,

the Director may bring proceedings against him before the Restrictive Practices Court.

Evidence in proceedings under s. 35.
1968 c. 64.
1968 c. 70.
1971 c. 36 (N.I.).

36.—(1) For the purposes of section 11 of the Civil Evidence Act 1968, section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 or section 7 of the Civil Evidence Act (Northern Ireland) 1971 (each of which relates to convictions as evidence in civil proceedings), proceedings under section 35 of this Act shall (without prejudice to the generality of the relevant definition) be taken to be civil proceedings within the meaning of the Act in question.

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(2) Where in any proceedings under section 35 of this Act the Director alleges such a breach of contract or breach of duty as is mentioned in section 34(3) of this Act, a judgment of any court given in civil proceedings, which includes a finding that the breach of contract or breach of duty in question was committed,—

(a) shall be admissible in evidence for the purpose of proving the breach of contract or breach of duty, and

(b) shall, unless the contrary is proved, be taken to be sufficient evidence that the breach of contract or breach of duty was committed.

(3) For the purposes of subsection (2) of this section no account shall be taken of a judgment given in any civil proceedings if it has subsequently been reversed on appeal, or has been varied on appeal so as to negative the finding referred to in that subsection.

1968 c. 64.
1968 c. 70.
1971 c. 36 (N.I.).

(4) In subsection (1) of this section " the relevant definition " means section 18(1) of the Civil Evidence Act 1968, section 17(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 or section 14(1) of the Civil Evidence Act (Northern Ireland) 1971, as the case may be.

Order of, or undertaking given to, Court in proceedings under s. 35.

37.—(1) Where in any proceedings before the Restrictive Practices Court under section 35 of this Act—

(a) the Court finds that the person against whom the proceedings are brought (in this section referred to as " the respondent ") has in the course of a business carried on by him persisted in such a course of conduct as is mentioned in section 34(1) of this Act, and

(b) the respondent does not give an undertaking to the Court under subsection (3) of this section which is accepted by the Court, and

(c) it appears to the Court that, unless an order is made against the respondent under this section, he is likely to continue that course of conduct or to carry on a similar course of conduct,

the Court may make an order against the respondent under this section.

(2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the course of conduct to which the finding of the Court under subsection (1)(a) of this section relates, and shall direct the respondent—

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(a) to refrain from continuing that course of conduct, and

(b) to refrain from carrying on any similar course of conduct in the course of his business.

(3) Where in any proceedings under section 35 of this Act the Court makes such a finding as is mentioned in subsection (1)(a) of this section, and the respondent offers to give to the Court an undertaking either—

(a) to refrain as mentioned in paragraphs (a) and (b) of subsection (2) of this section, or

(b) to take particular steps which, in the opinion of the Court, would suffice to prevent a continuance of the course of conduct to which the complaint relates and to prevent the carrying on by the respondent of any similar course of conduct in the course of his business,

the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

Provisions as to persons consenting to or conniving at courses of conduct detrimental to interests of consumers.

38.—(1) The provisions of this section shall have effect where it appears to the Director—

(a) that a body corporate has in the course of a business carried on by that body persisted in such a course of conduct as is mentioned in section 34(1) of this Act, and

(b) that the course of conduct in question has been so persisted in with the consent or connivance of a person (in this and the next following section referred to as " the accessory ") who at a material time fulfilled the relevant conditions in relation to that body.

(2) For the purposes of this section a person shall be taken to fulfil the relevant conditions in relation to a body corporate at any time if that person either—

(a) is at that time a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in any such capacity, or

(b) whether being an individual or a body of persons, corporate or unincorporate, has at that time a controlling interest in that body corporate.

(3) If, in the circumstances specified in subsection (1) of this section,—

(a) the Director has used his best endeavours to obtain from the accessory such an assurance as is mentioned in the next following subsection and has been unable to obtain such an assurance from him, or

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(*b*) the accessory has given such an assurance to the Director and it appears to the Director that he has failed to observe it,

the Director may bring proceedings against the accessory before the Restrictive Practices Court.

(4) The assurance referred to in subsection (3) of this section is a satisfactory written assurance given by the accessory that he will refrain—

(*a*) from continuing to consent to or connive at the course of conduct in question;

(*b*) from carrying on any similar course of conduct in the course of any business which may at any time be carried on by him; and

(*c*) from consenting to or conniving at the carrying on of any such course of conduct by any other body corporate in relation to which, at any time when that course of conduct is carried on, he fulfils the relevant conditions.

(5) Proceedings may be brought against the accessory under this section whether or not any proceedings are brought under section 35 of this Act against the body corporate referred to in subsection (1) of this section.

(6) Section 36 of this Act shall have effect in relation to proceedings under this section as it has effect in relation to proceedings under section 35 of this Act.

(7) For the purposes of this section a person (whether being an individual or a body of persons, corporate or unincorporate) has a controlling interest in a body corporate if (but only if) that person can, directly or indirectly, determine the manner in which one-half of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.

Order of, or undertaking given to, Court in proceedings under s. 38.

39.—(1) Where in any proceedings brought against the accessory before the Restrictive Practices Court under section 38 of this Act—

(*a*) the Court finds that the conditions specified in paragraphs (*a*) and (*b*) of subsection (1) of that section are fulfilled in the case of the accessory, and

(*b*) the accessory does not give an undertaking to the Court under subsection (3) of this section which is accepted by the Court, and

(*c*) it appears to the Court that, unless an order is made against the accessory under this section, it is likely that he will not refrain from acting in one or more of the ways mentioned in paragraphs (*a*) to (*c*) of subsection (4) of that section,

the Court may make an order against the accessory under this section.

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(2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the course of conduct to which the finding of the Court under subsection (1)(*a*) of this section relates, and shall direct the accessory, in relation to the course of conduct so indicated, to refrain from acting in any of the ways mentioned in paragraphs (*a*) to (*c*) of subsection (4) of section 38 of this Act.

(3) Where in any proceedings under section 38 of this Act the Court makes such a finding as is mentioned in subsection (1)(*a*) of this section, and the accessory offers to give to the Court an undertaking either—

(*a*) to refrain from acting in any of the ways mentioned in paragraphs (*a*) to (*c*) of subsection (4) of that section, or

(*b*) to take particular steps which, in the opinion of the Court, would suffice to prevent him from acting in any of those ways,

the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

Provisions as to interconnected bodies corporate.

40.—(1) This section applies to any order made under section 37 or section 39 of this Act.

(2) Where an order to which this section applies is made against a body corporate which is a member of a group of interconnected bodies corporate, the Restrictive Practices Court, on making the order, may direct that it shall be binding upon all members of the group as if each of them were the body corporate against which the order is made.

(3) Where an order to which this section applies has been made against a body corporate, and at a time when that order is in force—

(*a*) the body corporate becomes a member of a group of interconnected bodies corporate, or

(*b*) a group of interconnected bodies corporate of which it is a member is increased by the addition of one or more further members,

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the Restrictive Practices Court, on the application of the Director, may direct that the order shall thereafter be binding upon each member of the group as if it were the body corporate against which the order was made.

(4) The power conferred by subsection (3) of this section shall be exercisable—

(*a*) whether, at the time when the original order was made, the body corporate against which it was made was a member of a group of interconnected bodies corporate or not, and

(*b*) if it was such a member, whether a direction under subsection (2) of this section was given or not.

Concurrent jurisdiction of other courts in certain cases.

41.—(1) In any case where—

(*a*) the Director could bring proceedings against a person before the Restrictive Practices Court under section 35 or section 38 of this Act, and

(*b*) it appears to the Director that the conditions specified in the next following subsection are fulfilled,

the Director may, if he thinks fit, bring those proceedings in an appropriate alternative court instead of bringing them before the Restrictive Practices Court; and, in relation to any proceedings brought by virtue of this section, the appropriate alternative court in which they are brought shall have the like jurisdiction as the Restrictive Practices Court would have had if they had been brought in that Court.

(2) The conditions referred to in the preceding subsection are—

(*a*) that neither the person against whom the proceedings are to be brought nor the person against whom any associated proceedings have been or are intended to be brought is a body corporate having a share capital, paid up or credited as paid up, of an amount exceeding £10,000, and

(*b*) that neither those proceedings nor any associated proceedings involve or are likely to involve the determination of a question (whether of law or of fact) of such general application as to justify its being reserved for determination by the Restrictive Practices Court.

(3) For the purposes of this section, the following shall be appropriate alternative courts in relation to proceedings in respect of a course of conduct maintained in the course of a business, that is to say, the county court for any district (or, in Northern Ireland, any division) in which, or, in Scotland, any sheriff court within whose jurisdiction, that business is carried on.

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(4) In relation to any proceedings brought in an appropriate alternative court by virtue of this section, or to any order made in any such proceedings, any reference in section 37, in section 39 or section 40 of this Act to the Restrictive Practices Court shall be construed as a reference to the appropriate alternative court in which the proceedings are brought.

(5) In this section " associated proceedings "—

(*a*) in relation to proceedings under section 35 of this Act, means proceedings under section 38 of this Act against a person as being a person consenting to or conniving at the course of conduct in question, and

(*b*) in relation to proceedings under section 38 of this Act, means proceedings under section 35 of this Act against a person as being the person by whom the course of conduct in question has been maintained.

Appeals from decisions or orders of courts under Part III.

42.—(1) Notwithstanding anything in any other enactment, an appeal, whether on a question of fact or on a question of law, shall lie from any decision or order of any court in proceedings under Part III of this Act.

(2) Any such appeal shall lie—

(*a*) in the case of proceedings in England and Wales, to the Court of Appeal;

(*b*) in the case of proceedings in Scotland, to the Court of Session;

(*c*) in the case of proceedings in Northern Ireland, to the Court of Appeal in Northern Ireland.

Legal aid in proceedings under Part III in Restrictive Practices Court.

43.—(1) The paragraph set out in the next following subsection shall be inserted—

(*a*) as paragraph 5, at the end of Part I of Schedule 1 to the Legal Aid and Advice Act 1949; 1949 c. 51.

(*b*) as paragraph 4, at the end of Part I of Schedule 1 to the Legal Aid (Scotland) Act 1967; and 1967 c. 43.

(*c*) as paragraph 6, at the end of Part I of Schedule 1 to the Legal Aid and Advice Act (Northern Ireland) 1965. 1965 c. 8 (N.I.).

(2) The paragraph referred to in subsection (1) of this section is as follows:—

" Proceedings in the Restrictive Practices Court under Part III of the Fair Trading Act 1973, and any proceedings in that Court in consequence of an order made, or undertaking given to the Court, under that Part of that Act ".

PART IV

PART IV

FUNCTIONS OF DIRECTOR AND COMMISSION IN RELATION TO MONOPOLY SITUATIONS AND UNCOMPETITIVE PRACTICES

Powers for Director to require information

General power for Director to require information.

44.—(1) Where it appears to the Director that there are grounds for believing—

(*a*) that a monopoly situation may exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, and

(*b*) that in accordance with the following provisions of this Part of this Act he would not be precluded from making a monopoly reference to the Commission with respect to the existence or possible existence of that situation,

the Director, for the purpose of assisting him in determining whether to make a monopoly reference with respect to the existence or possible existence of that situation, may exercise the powers conferred by the next following subsection.

(2) In the circumstances and for the purpose mentioned in the preceding subsection the Director may require any person who supplies or produces goods of the description in question in the United Kingdom, or to whom any such goods are supplied in the United Kingdom, or (as the case may be) any person who supplies services of that description in the United Kingdom, or for whom any such services are so supplied, to furnish to the Director such information as the Director may consider necessary with regard to—

(*a*) the value, cost, price or quantity of goods of that description supplied or produced by that person, or of goods of that description supplied to him, or (as the case may be) the value, cost, price or extent of the services of that description supplied by that person or of the services of that description supplied for him, or

(*b*) the capacity of any undertaking carried on by that person to supply, produce or make use of goods of that description, or (as the case may be) to supply or make use of services of that description, or

(*c*) the number of persons employed by that person wholly or partly on work related to the supply, production or use of goods of that description, or (as the case may be) the supply or use of services of that description.

PART IV

Special power to require information with respect to complex monopoly situations.

45.—(1) Where it appears to the Director that there are grounds for believing—

(*a*) that a complex monopoly situation may exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, and

(*b*) that in accordance with the following provisions of this Part of this Act he would not be precluded from making a monopoly reference to the Commission with respect to the existence or possible existence of that situation,

the Director may formulate proposals for requiring specified persons to furnish information to him in accordance with the proposals for the purpose of assisting him in determining whether to make a monopoly reference with respect to the existence or possible existence of that situation.

(2) The persons specified in any such proposals shall be persons appearing to the Director to be, or to be included among, those who, in relation to the production or supply of goods or to the supply of services of the description in question, or in relation to exports from the United Kingdom of goods of the description in question,—

(*a*) may be parties to any such agreement as is mentioned in paragraph (*d*) of section 6(1) or paragraph (*d*) of section 7(1) of this Act (or mentioned in either of those paragraphs as modified by section 9(2) of this Act) or may be parties to any such agreement as is mentioned in subsection (2) or subsection (3) of section 8 of this Act, or

(*b*) may be conducting their respective affairs as mentioned in section 6(2) or in section 7(2) of this Act.

(3) Any such proposals shall also specify the description of goods or services in question, and—

(*a*) in a case falling within paragraph (*a*) of subsection (2) of this section, shall indicate the particular respects in which it appears to the Director that any agreement in question may be such an agreement as is referred to in that paragraph, or

(*b*) in a case falling within paragraph (*b*) of that subsection, shall indicate the particular respects in which it appears to the Director that the persons specified in the proposals may be conducting their respective affairs in a manner referred to in that paragraph,

and shall state what information the Director proposes that the persons specified in the proposals should be required to furnish for the purpose of indicating whether, in those respects, they are parties to such an agreement, or are so conducting their respective affairs, and, if so, of indicating in what circumstances they are parties to such an agreement or are so conducting their affairs.

(4) Where the Director has formulated proposals under this section, he may submit those proposals to the Secretary of State for approval; and if the Secretary of State approves the proposals, with or without modifications, the Director may require any person specified in the proposals to furnish to the Director such information as the Director may specify in accordance with the proposals, or, if the proposals have been approved with modifications, in accordance with the proposals as so modified.

Supplementary provisions as to requirements to furnish information.

46.—(1) Any power conferred on the Director by the preceding provisions of this Part of this Act to require a person to furnish information shall be exercisable by notice in writing served on that person.

(2) Any person who refuses or wilfully neglects to furnish to the Director information required by such a notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £400.

(3) Any person who, in furnishing information required by such a notice, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence and shall be liable—

(*a*) on summary conviction, to a fine not exceeding £400;

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Monopoly references

General provisions as to monopoly references.

47.—(1) A monopoly reference—

(*a*) shall specify the description of goods or services to which it relates;

(*b*) in the case of a reference relating to goods, shall state whether it relates to the supply of goods or to exports of goods from the United Kingdom or to both; and

(*c*) if, for the purposes of the reference, consideration is to be limited to a part of the United Kingdom, shall specify the part of the United Kingdom to which consideration is to be limited,

and (subject to the next following subsection) shall be framed in one or other of the ways specified in section 48 or section 49 of this Act.

(2) A monopoly reference (whether it falls within section 48 or within section 49 of this Act) may be so framed as to require the Commission to exclude from consideration, or to limit consideration to,—

(*a*) such agreements as are mentioned in paragraph (*d*) of section 6(1) or paragraph (*d*) of section 7(1) of this Act (or in either of those paragraphs as modified by section 9(2) of this Act) or as are mentioned in subsection (2) or subsection (3) of section 8 of this Act, or

(*b*) agreements or practices whereby persons conduct their affairs as mentioned in section 6(2) or section 7(2) of this Act,

or to exclude from consideration, or to limit consideration to, such one or more agreements or practices falling within paragraph (*a*) or paragraph (*b*) of this subsection as are specified in the reference.

Monopoly reference limited to the facts.

48. A monopoly reference may be so framed as to require the Commission only to investigate and report on the questions whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so,—

(*a*) by virtue of which provisions of sections 6 to 8 of this Act that monopoly situation is to be taken to exist;

(*b*) in favour of what person or persons that monopoly situation exists;

(*c*) whether any steps (by way of uncompetitive practices or otherwise) are being taken by that person or those persons for the purpose of exploiting or maintaining the monopoly situation and, if so, by what uncompetitive practices or in what other way; and

(*d*) whether any action or omission on the part of that person or those persons is attributable to the existence of the monopoly situation and, if so, what action or omission and in what way it is so attributable;

and a monopoly reference so framed is in this Act referred to as a "monopoly reference limited to the facts".

Monopoly reference not limited to the facts.

49.—(1) A monopoly reference may be so framed as to require the Commission to investigate and report on the question whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so, to investigate and report—

(*a*) on the questions mentioned in paragraphs (*a*) to (*d*) of section 48 of this Act, and (*b*) on the question whether any facts found by the Commission in pursuance of their investigations under the preceding provisions of this subsection operate, or may be expected to operate, against the public interest.

(2) A monopoly reference may be so framed as to require the Commission to investigate and report on the questions whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so,—

(*a*) by virtue of which provisions of sections 6 to 8 of this Act that monopoly situation is to be taken to exist;

(*b*) in favour of what person or persons that monopoly situation exists; and

(*c*) whether any action or omission on the part of that person or those persons in respect of matters specified in the reference for the purposes of this paragraph operates, or may be expected to operate, against the public interest.

(3) For the purposes of subsection (2)(*c*) of this section any matter may be specified in a monopoly reference if it relates to any of the following, that is to say—

(*a*) prices charged, or proposed to be charged, for goods or services of the description specified in the reference;

(*b*) any recommendation or suggestion made as to such prices;

(*c*) any refusal to supply goods or services of the description specified in the reference;

(*d*) any preference given to any person (whether by way of discrimination in respect of prices or in respect of priority of supply or otherwise) in relation to the supply of goods or services of that description;

and any matter not falling within any of the preceding paragraphs may be specified for those purposes in a monopoly reference if, in the opinion of the person or persons making the reference, it is of a kind such that (if a monopoly situation is found to exist) that matter might reasonably be regarded as a step taken for the purpose of exploiting or maintaining that situation or as being attributable to the existence of that situation.

(4) A monopoly reference framed in either of the ways mentioned in subsections (1) and (2) of this section is in this Act referred to as a " monopoly reference not limited to the facts ".

Monopoly references by Director.

50.—(1) Where it appears to the Director that a monopoly situation exists or may exist in relation to—

(*a*) the supply of goods of any description, or

(*b*) the supply of services of any description, or

(*c*) exports of goods of any description from the United Kingdom, either generally or to any particular market,

the Director, subject to section 12 of this Act and to the following provisions of this section, may if he thinks fit make a monopoly reference to the Commission with respect to the existence or possible existence of such a monopoly situation.

(2) No monopoly reference shall be made by the Director with respect to the existence or possible existence of a monopoly situation in relation to the supply of goods or services of any description specified in Part I of Schedule 5 or in Part I of Schedule 7 to this Act.

(3) Notwithstanding anything in subsections (3) and (4) of section 10 of this Act—

(*a*) for the purposes of any monopoly reference made by the Director the supply of goods or services of any description specified in the first column of Part II of Schedule 5 or of Part II of Schedule 7 to this Act in any manner specified in relation to that description of goods or services in the second column of Part II of the relevant Schedule shall be taken to be a separate form of supply, and

(*b*) any monopoly reference made by the Director in relation to the supply of goods or services of any such description shall be limited so as to exclude that form of supply.

(4) For the purposes of any monopoly reference made by the Director in relation to goods of any description specified in the first column of Part III of Schedule 7 to this Act—

(*a*) the supply of goods of that description in Northern Ireland in any manner specified in relation to that description of goods in the second column of that Part of that Schedule shall be taken to be a separate form of supply, and, notwithstanding anything in section 10(3) and (4) of this Act, any monopoly reference so made in relation to the supply of goods of any such description in Northern Ireland shall be limited so as to exclude that form of supply, and

(*b*) for the purposes of any such monopoly reference the Director shall so exercise his powers under section 9 of this Act as to comply with the requirements of the preceding paragraph.

(5) The Secretary of State may by order made by statutory instrument vary any of the provisions of Schedule 7 to this Act, either by adding one or more further entries or by altering

or deleting any entry for the time being contained in it; and any reference in this Act to that Schedule shall be construed as a reference to that Schedule as for the time being in force.

(6) On making a monopoly reference to the Commission, the Director shall send a copy of it to the Secretary of State; and if, before the end of the period of fourteen days from the day on which the reference is first published in the Gazette in accordance with section 53 of this Act, the Secretary of State directs the Commission not to proceed with the reference,—

(*a*) the Commission shall not proceed with that reference, but

(*b*) nothing in the preceding paragraph shall prevent the Commission from proceeding with any subsequent monopoly reference, notwithstanding that it relates wholly or partly to the same matters.

Monopoly references by Ministers.

51.—(1) Subject to the following provisions of this section, the Secretary of State, or the Secretary of State and any other Minister acting jointly, where it appears to him or them that a monopoly situation exists or may exist in relation to—

(*a*) the supply of goods of any description, or

(*b*) the supply of services of any description, or

(*c*) exports of goods of any description from the United Kingdom, either generally or to any particular market,

may, if the Secretary of State (or, in the case of joint action by the Secretary of State and another Minister, each of them) thinks fit, make a monopoly reference to the Commission with respect to the existence or possible existence of such a monopoly situation.

(2) Where it appears to the Secretary of State that a monopoly situation exists or may exist as mentioned in the preceding subsection, and that the goods or services in question are of a description specified in Part I of, or in the first column of Part II of, Schedule 5 or Schedule 7 to this Act, the Secretary of State shall not make a monopoly reference with respect to the existence or possible existence of that situation except jointly with such one or more of the Ministers mentioned in the next following subsection as appear to him to have functions directly relating—

(*a*) to the supply of goods or services of that description in the area (whether consisting of the whole or part of the United Kingdom) in relation to which the question arises, or

(*b*) to exports of goods of that description from the United Kingdom,

as the case may be.

(3) The Ministers referred to in subsection (2) of this section are the Secretary of State for Scotland, the Secretary of State for Wales, the Secretary of State for Northern Ireland, the Secretary of State for the Environment, the Minister of Agriculture, Fisheries and Food, the Minister of Agriculture for Northern Ireland, the Minister of Commerce for Northern Ireland and the Minister of Posts and Telecommunications.

(4) Where it appears to the Secretary of State that a monopoly situation exists or may exist as mentioned in subsection (1) of this section in relation to the supply in Northern Ireland of goods of a description specified in the first column of Part III of Schedule 7 to this Act, the Secretary of State shall not make a monopoly reference with respect to the existence or possible existence of that situation except jointly with the Minister of Agriculture for Northern Ireland.

Variation of monopoly reference.

52.—(1) Subject to the following provisions of this section, the Director may at any time vary a monopoly reference made by him, and the Secretary of State (or, in the case of a monopoly reference made by the Secretary of State jointly with one or more other Ministers, the Secretary of State and that Minister or those Ministers acting jointly) may vary a monopoly reference made by him or them.

(2) A monopoly reference not limited to the facts shall not be varied so as to become a monopoly reference limited to the facts; but (subject to the following provisions of this section) a monopoly reference limited to the facts may be varied so as to become a monopoly reference not limited to the facts, whether the Commission have already reported on the reference as originally made or not.

(3) A monopoly reference made by the Director shall not be varied so as to become a reference which he is precluded from making by any provisions of section 50 of this Act.

(4) On varying a monopoly reference made by him, the Director shall send a copy of the variation to the Secretary of State; and if, before the end of the period of fourteen days from the day on which the variation is first published in the Gazette in accordance with the next following section, the Secretary of State directs the Commission not to give effect to the variation,—

(*a*) the Commission shall proceed with the reference as if that variation had not been made, but

(*b*) nothing in the preceding paragraph shall prevent the Commission from proceeding with any subsequent monopoly reference, or from giving effect to any subsequent variation, notwithstanding that it relates wholly or partly to the matters to which that variation related.

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(5) In this section and in sections 53 to 55 of this Act "Minister" includes the Minister of Agriculture for Northern Ireland and the Minister of Commerce for Northern Ireland.

Publication of monopoly references and variations, and of directions relating to them.

53.—(1) On making a monopoly reference, or a variation of a monopoly reference, the Director or, as the case may be, the Secretary of State (or, in the case of a monopoly reference or variation made by the Secretary of State acting jointly with one or more other Ministers, the Secretary of State and that Minister or those Ministers acting jointly) shall arrange for the reference or variation to be published in full in the Gazette, and shall arrange for the reference or variation to be published in such other manner as he or they may think most suitable for bringing it to the attention of persons who, in his or their opinion, would be affected by it.

(2) Where the Secretary of State gives a direction under section 50(6) of this Act with respect to a monopoly reference, or gives a direction under section 52(4) of this Act with respect to a variation of a monopoly reference, the Secretary of State shall arrange for the direction to be published in the Gazette and otherwise in the same manner as the monopoly reference or variation was published in accordance with the preceding subsection.

(3) In this section "the Gazette" means the London, Edinburgh and Belfast Gazettes, except that, in relation to a monopoly reference under which consideration is limited to a particular part of the United Kingdom in accordance with section 9 of this Act (including a reference under which consideration is required to be so limited by section 50(4)(*b*) of this Act), it means such one or more of those Gazettes as are appropriate to that part of the United Kingdom.

(4) In sections 50 and 52 of this Act any reference to publication in the Gazette is a reference to publication in the London Gazette, the Edinburgh Gazette or the Belfast Gazette, whichever first occurs.

Report of Commission on monopoly reference.

54.—(1) A report of the Commission on a monopoly reference—

(*a*) if the reference was made by the Director, shall be made to the Secretary of State, and

(*b*) in any other case, shall be made to the Minister or Ministers by whom the reference was made.

(2) In making their report on a monopoly reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—

(*a*) such an account of their reasons for those conclusions, and

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(*b*) such a survey of the general position with respect to the subject-matter of the reference, and of the developments which have led to that position,

as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.

(3) Where, on a monopoly reference not limited to the facts, the Commission find that a monopoly situation exists and that facts found by the Commission in pursuance of their investigations under subsection (1) or subsection (2) of section 49 of this Act operate, or may be expected to operate, against the public interest, the report shall specify those facts, and the conclusions to be included in the report, in so far as they relate to the operation of those facts, shall specify the particular effects, adverse to the public interest, which in their opinion those facts have or may be expected to have; and the Commission—

(*a*) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing those adverse effects, and

(*b*) may, if they think fit, include in their report recommendations as to such action.

(4) In paragraph (*a*) of subsection (3) of this section the reference to action to be taken for the purpose mentioned in that paragraph is a reference to action to be taken for that purpose either—

(*a*) by one or more Ministers (including Ministers or departments of the Government of Northern Ireland) or other public authorities, or

(*b*) by the person or (as the case may be) one or more of the persons in whose favour, in accordance with the findings of the Commission, the monopoly situation in question exists.

(5) Where, on a monopoly reference not limited to the facts, the Commission find—

(*a*) that a monopoly situation exists, and

(*b*) that the person (or, if more than one, any of the persons) in whose favour it exists is a party to an agreement to which Part I of the Act of 1956 applies,

the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which Part I of that Act applies, operate, or may be expected to operate, against the public interest; and subsection (3) of this section, in so far as it refers to facts found by the Commission in pursuance of their investigations, shall have effect subject to the provisions of this subsection.

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Time-limit for report on monopoly reference.

55.—(1) A monopoly reference shall specify a period within which the Commission are to report on the reference; and, if a report of the Commission on the reference—

(*a*) is not made before the end of the period so specified, or

(*b*) if one or more extended periods are allowed under the next following subsection, is not made before the end of that extended period or of the last of those extended periods, as the case may be,

the reference shall cease to have effect and no action, or (if action has already been taken) no further action, shall be taken in relation to that reference under this Act.

(2) Directions may be given—

(*a*) in the case of a monopoly reference made by the Director or by the Secretary of State otherwise than jointly with one or more Ministers, by the Secretary of State, or

(*b*) in the case of a monopoly reference made by the Secretary of State jointly with one or more other Ministers, by the Secretary of State and that Minister or those Ministers acting jointly,

allowing to the Commission such extended period for the purpose of reporting on the reference as may be specified in the directions, or, if the period has already been extended once or more than once by directions under this subsection, allowing to the Commission such further extended period for that purpose as may be so specified.

Order of appropriate Minister on report on monopoly reference.

56.—(1) The provisions of this section shall have effect where a report of the Commission on a monopoly reference not limited to the facts has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the conclusions of the Commission set out in the report, as so laid,—

(*a*) include conclusions to the effect that a monopoly situation exists and that facts found by the Commission in pursuance of their investigations under section 49 of this Act operate, or may be expected to operate, against the public interest, and

(*b*) specify particular effects, adverse to the public interest, which in their opinion those facts have or may be expected to have.

(2) In the circumstances mentioned in the preceding subsection the appropriate Minister may (subject to subsection (6) of this section) by order made by statutory instrument exercise such one or more of the powers specified in Parts I and II of Schedule 8 to this Act as he considers it requisite to exercise for the purpose of remedying or preventing the adverse effects specified in the report as mentioned in the preceding subsection; and those powers may be so exercised to such extent and in such manner as the appropriate Minister considers requisite for that purpose.

(3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the appropriate Minister shall take into account any recommendations included in the report of the Commission in pursuance of section 54(3)(*b*) of this Act and any advice given by the Director under section 88 of this Act.

(4) Subject to the next following subsection, in this section " the appropriate Minister " means the Secretary of State.

(5) Where, in any such report as is mentioned in subsection (1) of this section, the person or one of the persons specified as being the person or persons in whose favour the monopoly situation in question exists is a body corporate fulfilling the following conditions, that is to say—

(*a*) that the affairs of the body corporate are managed by its members, and

(*b*) that by virtue of an enactment those members are appointed by a Minister,

then for the purpose of making any order under this section in relation to that body corporate (but not for the purpose of making any such order in relation to any other person) " the appropriate Minister " in this section means the Minister by whom members of that body corporate are appointed.

(6) In relation to any such body corporate as is mentioned in subsection (5) of this section, the powers exercisable by virtue of subsection (2) of this section shall not include the powers specified in Part II of Schedule 8 to this Act.

PART V

MERGERS

Newspaper merger references

Meaning of " newspaper ", " transfer of newspaper or of newspaper assets " and related expressions.

57.—(1) In this Part of this Act—

(*a*) " newspaper " means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom;

(*b*) " newspaper proprietor " includes (in addition to an actual proprietor of a newspaper) any person having a controlling interest in a body corporate which is a newspaper proprietor, and any body corporate in which a newspaper proprietor has a controlling interest;

and any reference to the newspapers of a newspaper proprietor

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includes all newspapers in relation to which he is a newspaper proprietor and, in the case of a body corporate, all newspapers in relation to which a person having a controlling interest in that body corporate is a newspaper proprietor.

(2) In this Part of this Act " transfer of a newspaper or of newspaper assets " means any of the following transactions, that is to say—

(*a*) any transaction (whether involving a transfer or not) by virtue of which a person would become, or would acquire the right to become, a newspaper proprietor in relation to a newspaper;

(*b*) any transfer of assets necessary to the continuation of a newspaper as a separate newspaper (including goodwill or the right to use the name of the newspaper);

(*c*) any transfer of plant or premises used in the publication of a newspaper, other than a transfer made without a view to a change in the ownership or control of the newspaper or to its ceasing publication;

and " the newspaper concerned in the transfer ", in relation to any transaction falling within paragraph (*a*), paragraph (*b*) or paragraph (*c*) of this subsection, means the newspaper in relation to which (as mentioned in that paragraph) the transaction is or is to be effected.

(3) In this Part of this Act " average circulation per day of publication ", in relation to a newspaper, means its average circulation for the appropriate period, ascertained by dividing the number of copies to which its circulation amounts for that period by the number of days on which the newspaper was published during that period (circulation being calculated on the basis of actual sales in the United Kingdom of the newspaper as published on those days); and for the purposes of this subsection " the appropriate period "—

(*a*) in a case in which an application is made for consent under the next following section, means the period of six months ending six weeks before the date of the application, or

(*b*) in a case in which a transfer or purported transfer is made without any such application for consent, means the period of six months ending six weeks before the date of the transfer or purported transfer.

(4) For the purposes of this section a person has a controlling interest in a body corporate if (but only if) he can, directly or indirectly, determine the manner in which one-quarter of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.

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Prohibition of certain newspaper mergers.

58.—(1) Subject to the following provisions of this section, a transfer of a newspaper or of newspaper assets to a newspaper proprietor whose newspapers have an average circulation per day of publication amounting, together with that of the newspaper concerned in the transfer, to 500,000 or more copies shall be unlawful and void, unless the transfer is made with written consent given (conditionally or unconditionally) by the Secretary of State.

(2) Except as provided by subsections (3) and (4) of this section and by section 60(3) of this Act, the consent of the Secretary of State under the preceding subsection shall not be given in respect of a transfer until after the Secretary of State has received a report on the matter from the Commission.

(3) Where the Secretary of State is satisfied that the newspaper concerned in the transfer is not economic as a going concern and as a separate newspaper, then—

(*a*) if he is also satisfied that, if the newspaper is to continue as a separate newspaper, the case is one of urgency, he may give his consent to the transfer without requiring a report from the Commission under this section;

(*b*) if he is satisfied that the newspaper is not intended to continue as a separate newspaper, he shall give his consent to the transfer, and shall give it unconditionally, without requiring such a report.

(4) If the Secretary of State is satisfied that the newspaper concerned in the transfer has an average circulation per day of publication of not more than 25,000 copies, he may give his consent to the transfer without requiring a report from the Commission under this section.

(5) The Secretary of State may by order made by statutory instrument provide, subject to any transitional provisions contained in the order, that for any number specified in subsection (1) or subsection (4) of this section (whether as originally enacted or as previously varied by an order under this subsection) there shall be substituted such other number as is specified in the order.

(6) In this section " satisfied " means satisfied by such evidence as the Secretary of State may require.

Newspaper merger reference.

59.—(1) Where an application is made to the Secretary of State for his consent to a transfer of a newspaper or of newspaper assets, the Secretary of State, subject to the next following subsection, shall, within one month after receiving the application, refer the matter to the Commission for investigation and report.

(2) The Secretary of State shall not make a reference to the Commission under the preceding subsection in a case where—

(*a*) by virtue of subsection (3) of section 58 of this Act he is required to give his consent unconditionally without requiring a report from the Commission under this section, or

(*b*) by virtue of subsection (3) or subsection (4) of that section he has power to give his consent without requiring such a report from the Commission, and determines to exercise that power,

or where the application is expressed to depend on the operation of subsection (3) or subsection (4) of that section.

(3) On a reference made to them under this section (in this Act referred to as a " newspaper merger reference ") the Commission shall report to the Secretary of State whether the transfer in question may be expected to operate against the public interest, taking into account all matters which appear in the circumstances to be relevant and, in particular, the need for accurate presentation of news and free expression of opinion.

Time-limit for report on newspaper merger reference.

60.—(1) A report of the Commission on a newspaper merger reference shall be made before the end of the period of three months beginning with the date of the reference or of such further period (if any) as the Secretary of State may allow for the purpose in accordance with the next following subsection.

(2) The Secretary of State shall not allow any further period for a report on such a reference except on representations made by the Commission and on being satisfied that there are special reasons why the report cannot be made within the original period of three months; and the Secretary of State shall allow only one such further period on any one reference, and no such further period shall be longer than three months.

(3) If on such a reference the Commission have not made their report before the end of the period specified in subsection (1) or of any further period allowed under subsection (2) of this section, the Secretary of State may, without waiting for the report, give his consent to the transfer to which the reference relates.

Report on newspaper merger reference.

61.—(1) In making their report on a newspaper merger reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—

(*a*) such an account of their reasons for those conclusions, and

(*b*) such a survey of the general position with respect to the transfer of a newspaper or of newspaper assets to which the reference relates, and of the developments which have led to that position,

as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.

(2) Where on such a reference the Commission find that the transfer of a newspaper or of newspaper assets in question might operate against the public interest, the Commission shall consider whether any (and, if so, what) conditions might be attached to any consent to the transfer in order to prevent the transfer from so operating, and may, if they think fit, include in their report recommendations as to such conditions.

Enforcement provisions relating to newspaper mergers.

62.—(1) Any person who is knowingly concerned in, or privy to, a purported transfer of a newspaper or of newspaper assets which is unlawful by virtue of section 58 of this Act shall be guilty of an offence.

(2) Where under that section the consent of the Secretary of State is given to a transfer of a newspaper or of newspaper assets, but is given subject to one or more conditions, any person who is knowingly concerned in, or privy to, a breach of that condition, or of any of those conditions, as the case may be, shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) No proceedings for an offence under this section shall be instituted—

(*a*) in England or Wales, except by, or with the consent of, the Director of Public Prosecutions, or

(*b*) in Northern Ireland, except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

Other merger references

Mergers references to which ss. 64 to 75 apply.

63.—(1) Sections 64 to 75 of this Act shall have effect in relation to merger references other than newspaper merger references; and accordingly in those sections " merger reference " shall be construed—

(*a*) as not including a reference made under section 59 of this Act, but

(*b*) as including any merger reference relating to a transfer of a newspaper or of newspaper assets, if the reference is made under section 64 or section 75 of this Act in a case falling within section 59(2) of this Act.

(2) In the following provisions of this Part of this Act " enterprise " means the activities, or part of the activities, of a business.

Merger situation qualifying for investigation.

64.—(1) A merger reference may be made to the Commission by the Secretary of State where it appears to him that it is or may be the fact that two or more enterprises (in this section referred to as " the relevant enterprises "), of which one

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at least was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the United Kingdom, have, at a time or in circumstances falling within subsection (4) of this section, ceased to be distinct enterprises, and that either—

(*a*) as a result, the condition specified in subsection (2) or in subsection (3) of this section prevails, or does so to a greater extent, with respect to the supply of goods or services of any description, or

(*b*) the value of the assets taken over exceeds £5 million.

(2) The condition referred to in subsection (1)(*a*) of this section, in relation to the supply of goods of any description, is that at least one-quarter of all the goods of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom, either—

(*a*) are supplied by one and the same person or are supplied to one and the same person, or

(*b*) are supplied by the persons by whom the relevant enterprises (so far as they continue to be carried on) are carried on, or are supplied to those persons.

(3) The condition referred to in subsection (1)(*a*) of this section, in relation to the supply of services of any description, is that the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, is, to the extent of at least one-quarter, either—

(*a*) supply by one and the same person, or supply for one and the same person, or

(*b*) supply by the persons by whom the relevant enterprises (so far as they continue to be carried on) are carried on, or supply for those persons.

(4) For the purposes of subsection (1) of this section enterprises shall be taken to have ceased to be distinct enterprises at a time or in circumstances falling within this subsection if either—

(*a*) they did so not earlier than six months before the date on which the merger reference relating to them is to be made, or

(*b*) they did so under or in consequence of arrangements or transactions which were entered into without prior notice being given to the Secretary of State or to the Director of material facts about the proposed arrangements or transactions and in circumstances in which those facts had not been made public, and notice of those facts was not given to the Secretary of State or to the Director or made public more than six months before the date mentioned in the preceding paragraph.

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(5) In determining whether to make a merger reference to the Commission the Secretary of State shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a determination as soon as is reasonably practicable.

(6) On making a merger reference, the Secretary of State shall arrange for it to be published in such manner as he thinks most suitable for bringing it to the attention of persons who in his opinion would be affected by it.

(7) The Secretary of State may by order made by statutory instrument provide, subject to any transitional provisions contained in the order, that for the sum specified in subsection (1)(*b*) of this section (whether as originally enacted or as previously varied by an order under this subsection) there shall be substituted such other sum (not being less than £5 million) as is specified in the order.

(8) The fact that two or more enterprises have ceased to be distinct enterprises in the circumstances described in subsection (1) of this section (including in those circumstances the result specified in paragraph (*a*), or fulfilment of the condition specified in paragraph (*b*), of that subsection) shall, for the purposes of this Act, be regarded as creating a merger situation qualifying for investigation; and in this Act "merger situation qualifying for investigation" and any reference to the creation of such a situation shall be construed accordingly.

(9) In this section "made public" means so publicised as to be generally known or readily ascertainable.

Enterprises ceasing to be distinct enterprises.

65.—(1) For the purposes of this Part of this Act any two enterprises shall be regarded as ceasing to be distinct enterprises if either—

(*a*) they are brought under common ownership or common control (whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control), or

(*b*) either of the enterprises ceases to be carried on at all and does so in consequence of any arrangements or transaction entered into to prevent competition between the enterprises.

(2) For the purposes of the preceding subsection enterprises shall (without prejudice to the generality of the words "common control" in that subsection) be regarded as being under common control if they are—

(*a*) enterprises of interconnected bodies corporate, or

(*b*) enterprises carried on by two or more bodies corporate of which one and the same person or group of persons has control, or

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(*c*) an enterprise carried on by a body corporate and an enterprise carried on by a person or group of persons having control of that body corporate.

(3) A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, or the policy of any person in carrying on an enterprise, but without having a controlling interest in that body corporate or in that enterprise, may for the purposes of subsections (1) and (2) of this section be treated as having control of it.

(4) For the purposes of subsection (1)(*a*) of this section, in so far as it relates to bringing two or more enterprises under common control, a person or group of persons may be treated as bringing an enterprise under his or their control if—

(*a*) being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate, or

(*b*) being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy.

Time when enterprises cease to be distinct.

66.—(1) Where under or in consequence of the same arrangements or transaction, or under or in consequence of successive arrangements or transactions between the same parties or interests, successive events to which this subsection applies occur within a period of two years, then for the purposes of a merger reference those events may, if the Secretary of State thinks fit, be treated as having occurred simultaneously on the date on which the latest of them occurred.

(2) The preceding subsection applies to any event whereby, under or in consequence of the arrangements or the transaction or transactions in question, any enterprises cease as between themselves to be distinct enterprises.

(3) For the purposes of subsection (1) of this section any arrangements or transactions may be treated by the Secretary of State as arrangements or transactions between the same interests if it appears to him to be appropriate that they should be so treated, having regard to the persons who are substantially concerned in them.

(4) Subject to the preceding provisions of this section, the time at which any two enterprises cease to be distinct enterprises, where they do so under or in consequence of any arrangements or transaction not having immediate effect, or having immediate effect in part only, shall be taken to be the time when the parties to the arrangements or transaction become bound to such extent as will result, on effect being given to their obligations, in the enterprises ceasing to be distinct enterprises.

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(5) In accordance with subsection (4) of this section (but without prejudice to the generality of that subsection) for the purpose of determining the time at which any two enterprises cease to be distinct enterprises no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.

Valuation of assets taken over.

67.—(1) The provisions of this section shall have effect for the purposes of section 64(1)(*b*) of this Act.

(2) Subject to subsection (4) of this section, the value of the assets taken over—

(*a*) shall be determined by taking the total value of the assets employed in, or appropriated to, the enterprises which cease to be distinct enterprises, except any enterprise which remains under the same ownership and control, or if none of the enterprises remains under the same ownership and control, then that one of the enterprises having the assets with the highest value, and

(*b*) shall be so determined by reference to the values at which, on the enterprises ceasing to be distinct enterprises or (if they have not then done so) on the making of the merger reference to the Commission, the assets stand in the books of the relevant business, less any relevant provisions for depreciation, renewals or diminution in value.

(3) For the purposes of subsection (2) of this section any assets of a body corporate which, on a change in the control of the body corporate or of any enterprise of it, are dealt with in the same way as assets appropriated to any such enterprise shall be treated as appropriated to that enterprise.

(4) Where in accordance with subsection (1) of section 66 of this Act events to which that subsection applies are treated as having occurred simultaneously, subsection (2) of this section shall apply with such adjustments as appear to the Secretary of State or to the Commission to be appropriate.

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Supplementary provisions as to merger situations qualifying for investigation.

68.—(1) In relation to goods or services of any description which are the subject of different forms of supply—

(*a*) references in subsection (2) of section 64 of this Act to the supply of goods, or

(*b*) references in subsection (3) of that section to the supply of services,

shall be construed in whichever of the following ways appears to the Secretary of State or the Commission, as the case may be, to be appropriate in all the circumstances, that is to say, as references to any of those forms of supply taken separately, to all those forms of supply taken together, or to any of those forms of supply taken in groups.

(2) For the purposes of the preceding subsection the Secretary of State or the Commission may treat goods or services as being the subject of different forms of supply whenever the transactions in question differ as to their nature, their parties, their terms or their surrounding circumstances, and the difference is one which, in the opinion of the Secretary of State or of the Commission, as the case may be, ought for the purposes of that subsection to be treated as a material difference.

(3) For the purpose of determining whether the proportion of one-quarter mentioned in subsection (2) or subsection (3) of section 64 of this Act is fulfilled with respect to goods or services of any description, the Secretary of State or the Commission, as the case may be, shall apply such criterion (whether it be value or cost or price or quantity or capacity or number of workers employed or some other criterion, of whatever nature) or such combination of criteria as may appear to the Secretary of State or the Commission to be most suitable in all the circumstances.

(4) The criteria for determining when goods or services can be treated, for the purposes of section 64 of this Act, as goods or services of a separate description shall be such as in any particular case the Secretary of State thinks most suitable in the circumstances of that case.

Different kinds of merger references.

69.—(1) Subject to the following provisions of this Part of this Act, on a merger reference the Commission shall investigate and report on the questions—

(*a*) whether a merger situation qualifying for investigation has been created, and

(*b*) if so, whether the creation of that situation operates, or may be expected to operate, against the public interest.

(2) A merger reference may be so framed as to require the Commission, in relation to the question whether a merger situation qualifying for investigation has been created, to exclude from consideration paragraph (*a*) of subsection (1) of section 64 of this Act, or to exclude from consideration paragraph (*b*) of that subsection, or to exclude one of those paragraphs if the Commission find the other satisfied.

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(3) In relation to the question whether any such result as is mentioned in section 64(1)(*a*) of this Act has arisen, a merger reference may be so framed as to require the Commission to confine their investigation to the supply of goods or services in a specified part of the United Kingdom.

(4) A merger reference may require the Commission, if they find that a merger situation qualifying for investigation has been created, to limit their consideration thereafter to such elements in, or possible consequences of, the creation of that situation as may be specified in the reference, and to consider whether, in respect only of those elements or possible consequences, the situation operates, or may be expected to operate, against the public interest.

Time-limit for report on merger reference.

70.—(1) Every merger reference shall specify a period (not being longer than six months beginning with the date of the reference) within which a report on the reference is to be made; and a report of the Commission on a merger reference shall not have effect, and no action shall be taken in relation to it under this Act, unless the report is made before the end of that period or of such further period (if any) as may be allowed by the Secretary of State in accordance with the next following subsection.

(2) The Secretary of State shall not allow any further period for a report on a merger reference except on representations made by the Commission and on being satisfied that there are special reasons why the report cannot be made within the period specified in the reference; and the Secretary of State shall allow only one such further period on any one reference, and no such further period shall be longer than three months.

Variation of certain merger references.

71.—(1) Subject to the following provisions of this section, the Secretary of State may at any time vary a merger reference made under section 69(4) of this Act.

(2) A merger reference made under section 69(4) of this Act shall not be so varied that it ceases to be a reference limited in accordance with that subsection.

(3) Without prejudice to the powers of the Secretary of State under section 70 of this Act, a merger reference shall not be varied so as to specify a period within which a report on the reference is to be made which is different from the period specified in the reference in accordance with that section.

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Report of Commission on merger reference

72.—(1) In making their report on a merger reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—

(*a*) such an account of their reasons for those conclusions, and

(*b*) such a survey of the general position with respect to the subject-matter of the reference, and of the developments which have led to that position,

as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.

(2) Where on a merger reference the Commission find that a merger situation qualifying for investigation has been created and that the creation of that situation operates or may be expected to operate against the public interest (or, in a case falling within subsection (4) of section 69 of this Act, find that one or more elements in or consequences of that situation which were specified in the reference in accordance with that subsection so operate or may be expected so to operate) the Commission shall specify in their report the particular effects, adverse to the public interest, which in their opinion the creation of that situation (or, as the case may be, those elements in or consequences of it) have or may be expected to have; and the Commission—

(*a*) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing those adverse effects, and

(*b*) may, if they think fit, include in their report recommendations as to such action.

(3) In paragraph (*a*) of subsection (2) of this section the reference to action to be taken for the purpose mentioned in that paragraph is a reference to action to be taken for that purpose either—

(*a*) by one or more Ministers (including Ministers or departments of the Government of Northern Ireland) or other public authorities, or

(*b*) by one or more persons specified in the report as being persons carrying on, owning or controlling any of the enterprises which, in accordance with the conclusions of the Commission, have ceased to be distinct enterprises.

Order of Secretary of State on report on merger reference.

73.—(1) The provisions of this section shall have effect where a report of the Commission on a merger reference has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the conclusions of the Commission set out in the report, as so laid,—

(*a*) include conclusions to the effect that a merger situation qualifying for investigation has been created and that its creation, or particular elements in or consequences of it specified in the report, operate or may be expected to operate against the public interest, and

(*b*) specify particular effects, adverse to the public interest, which in the opinion of the Commission the creation of that situation, or (as the case may be) those elements in or consequences of it, have or may be expected to have.

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(2) In the circumstances mentioned in the preceding subsection the Secretary of State may by order made by statutory instrument exercise such one or more of the powers specified in Parts I and II of Schedule 8 to this Act as he may consider it requisite to exercise for the purpose of remedying or preventing the adverse effects specified in the report as mentioned in the preceding subsection; and those powers may be so exercised to such extent and in such manner as the Secretary of State considers requisite for that purpose.

(3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the Secretary of State shall take into account any recommendations included in the report of the Commission in pursuance of section 72(2)(*b*) of this Act and any advice given by the Director under section 88 of this Act.

Interim order in respect of merger reference.

74.—(1) Where a merger reference has been made to the Commission, and does not impose on the Commission a limitation under section 69(4) of this Act, then, with a view to preventing action to which this subsection applies, the Secretary of State, subject to subsection (3) of this section, may by order made by statutory instrument—

(*a*) prohibit or restrict the doing of things which in his opinion would constitute action to which this subsection applies, or

(*b*) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets, or

(*c*) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner, or

(*d*) exercise any of the powers which, by virtue of paragraph 12 of Schedule 8 to this Act, are exercisable by an order under section 73 of this Act.

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(2) In relation to a merger reference the preceding subsection applies to any action which might prejudice the reference or impede the taking of any action under this Act which may be warranted by the Commission's report on the reference.

(3) No order shall be made under this section in respect of a merger reference after whichever of the following events first occurs, that is to say—

(*a*) the time (including any further period) allowed to the Commission for making a report on the reference expires without their having made such a report;

(*b*) the period of forty days beginning with the day on which a report of the Commission on the reference is laid before Parliament expires.

(4) An order under this section made in respect of a merger reference (if it has not previously ceased to have effect) shall cease to have effect on the occurrence of whichever of those events first occurs, but without prejudice to anything previously done under the order.

(5) Subsection (4) of this section shall have effect without prejudice—

(*a*) to the operation, in relation to any such order, of section 134(1) of this Act, or

(*b*) to the operation of any order made under section 73 of this Act which exercises the same or similar powers to those exercised by the order under this section.

Reference in anticipation of merger.

75.—(1) A merger reference may be made to the Commission by the Secretary of State where it appears to him that it is or may be the fact that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation.

(2) Subject to the following provisions of this section, on a merger reference under this section the Commission shall proceed in relation to the prospective and (if events so require) the actual results of the arrangements proposed or made as, in accordance with the preceding provisions of this Part of this Act, they could proceed if the arrangements in question had actually been made, and the results in question had followed immediately before the date of the reference under this section.

(3) A merger reference under this section may require the Commission, if they find that a merger situation qualifying for investigation has been created, or will be created if the arrangements in question are carried into effect, to limit their consideration thereafter to such elements in, or possible consequences of, the creation of that situation as may be specified in the reference, and to consider whether, in respect only of those elements or possible consequences, the situation might be expected to operate against the public interest.

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(4) In relation to a merger reference under this section, sections 66, 67, 69, 71, 72, 73 and 74 of this Act shall apply subject to the following modifications, that is to say—

(*a*) section 66 shall apply with the necessary adaptations in relation to enterprises which will or may cease to be distinct enterprises under or in consequence of arrangements not yet carried into effect or not yet fully carried into effect;

(*b*) in section 67(4) the reference to subsection (1) of section 66 shall be construed as a reference to that subsection as modified in accordance with the preceding paragraph;

(*c*) in section 69, subsection (1) shall be construed as modified by subsection (2) of this section; in subsections (2) and (3) any reference to the question whether a merger situation qualifying for investigation has been created, or whether a result mentioned in section 64(1)(*a*) of this Act has arisen, shall be construed as including a reference to the question whether such a situation will be created or such a result will arise if the arrangements in question are carried into effect; and subsection (4) of that section shall not apply;

(*d*) in section 71, in section 72(2) and in section 74(1), the references to section 69(4) of this Act shall be construed as references to subsection (3) of this section; and

(*e*) in section 73(1), the reference to conclusions to the effect that a merger situation qualifying for investigation has been created shall be construed as including a reference to conclusions to the effect that such a situation will be created if the arrangements in question are carried into effect.

(5) If, in the course of their investigations on a merger reference under this section, it appears to the Commission that the proposal to make arrangements such as are mentioned in the reference has been abandoned, the Commission—

(*a*) shall, if the Secretary of State consents, lay the reference aside, but

(*b*) shall in that case furnish to the Secretary of State such information as he may require as to the results until then of the investigations.

Supplementary

Functions of Director in relation to merger situations.

76. It shall be the duty of the Director—

(*a*) to take all such steps as are reasonably practicable for keeping himself informed about actual or prospective

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arrangements or transactions which may constitute or result in the creation of merger situations qualifying for investigation, and

(*b*) to make recommendations to the Secretary of State as to any action under this Part of this Act which in the opinion of the Director it would be expedient for the Secretary of State to take in relation to any such arrangements or transactions.

Associated persons.

77.—(1) For the following purposes, that is to say—

(*a*) for the purpose of determining under section 57(1) of this Act whether a person is a newspaper proprietor and, if so, which newspapers are his newspapers;

(*b*) for the purpose of determining under section 65 of this Act whether any two enterprises have been brought under common ownership or common control; and

(*c*) for the purpose of determining what activities are carried on by way of business by any one person, in so far as that question arises in the application, by virtue of an order under section 73 of this Act, of paragraph 14 of Schedule 8 to this Act,

associated persons, and any bodies corporate which they or any of them control, shall (subject to the next following subsection) be treated as one person.

(2) The preceding subsection shall not have effect—

(*a*) for the purpose mentioned in paragraph (*a*) of that subsection so as to exclude from section 58 of this Act any case which would otherwise fall within that section, or

(*b*) for the purpose mentioned in paragraph (*b*) of the preceding subsection so as to exclude from section 65 of this Act any case which would otherwise fall within that section.

(3) A merger reference other than a newspaper merger reference (whether apart from this section the reference could be made or not) may be so framed as to exclude from consideration, either altogether or for any specified purpose or to any specified extent, any matter which, apart from this section, would not have been taken into account on that reference.

(4) For the purposes of this section the following persons shall be regarded as associated with one another, that is to say—

(*a*) any individual and that individual's husband or wife and any relative, or husband or wife of a relative, of that individual or of that individual's husband or wife;

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(*b*) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;

(*c*) persons carrying on business in partnership and the husband or wife and relatives of any of them;

(*d*) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets.

(5) The reference in subsection (1) of this section to bodies corporate which associated persons control shall be construed as follows, that is to say—

(*a*) in its application for the purpose mentioned in paragraph (*a*) of that subsection, "control" in that reference means having a controlling interest within the meaning of section 57(4) of this Act, and

(*b*) in its application for any other purpose mentioned in subsection (1) of this section, "control" in that reference shall be construed in accordance with section 65(3) and (4) of this Act.

(6) In this section "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being taken into account as a relative or to trace a relationship in the same way as that person's child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband.

PART VI

REFERENCES TO COMMISSION OTHER THAN MONOPOLY AND MERGER REFERENCES

General references.

78.—(1) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may at any time require the Commission to submit to him or them a report on the general effect on the public interest—

(*a*) of practices of a specified class which, in his or their opinion, are commonly adopted as a result of, or for the purpose of preserving, monopoly situations, or

(*b*) of any specified practices which appear to him or them to be uncompetitive practices.

(2) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may also at any time require the Commission to submit to him or them a report on the desirability of action of any specified description for the purpose of remedying or preventing effects, adverse to the public interest, which result or might result from monopoly situations or from any such practices as are mentioned in the preceding subsection.

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(3) The matters to be taken into consideration by the Commission on any reference under this section shall not include any provisions of any agreement in so far as they are provisions by virtue of which it is an agreement to which Part I of the Act of 1956 applies.

References as to restrictive labour practices.

79.—(1) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may at any time refer to the Commission the questions—

(*a*) whether a practice of a description specified in the reference exists and, if so, whether it is a restrictive labour practice, and

(*b*) if it exists and is a restrictive labour practice, whether it operates or may be expected to operate against the public interest and, if so, what particular effects, adverse to the public interest, it has or may be expected to have.

(2) A reference under this section may refer those questions to the Commission either—

(*a*) in relation to commercial activities in the United Kingdom generally, or

(*b*) in relation to such commercial activities in the United Kingdom as consist of the supply of goods of a description specified in the reference, or of the supply of services of a description so specified, or of the export from the United Kingdom of goods of a description so specified.

(3) The Commission shall examine any questions referred to them under this section and shall report to the Minister or Ministers who referred them to the Commission.

(4) For the purposes of their functions under subsection (3) of this section the Commission shall disregard anything which appears to them to have been done, or omitted to be done, in contemplation or furtherance of an industrial dispute within the meaning of the Industrial Relations Act 1971.

1971 c. 72.

(5) In this section "restrictive labour practice" means any practice whereby restrictions or other requirements, not being restrictions or requirements relating exclusively to rates of remuneration, operate in relation to the employment of workers in any commercial activities in the United Kingdom or in relation to work done by any such workers, and are restrictions or requirements which—

(*a*) could be discontinued without thereby contravening the provisions of an enactment or of any instrument having effect by virtue of an enactment, and

(*b*) are not necessary for, or are more stringent than is necessary for, the efficient conduct of those activities.

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Variation of reference under Part VI.

80. A reference made under this Part of this Act may at any time be varied by the Minister or Ministers by whom the reference was made.

PART VII

PROVISIONS RELATING TO REFERENCES TO ADVISORY COMMITTEE OR TO COMMISSION

Procedure in carrying out investigations.

81.—(1) The Advisory Committee, in carrying out an investigation on a reference to which section 17 of this Act applies, and the Commission, in carrying out an investigation on a reference made to them under this Act (whether it is a monopoly reference or a merger reference or a reference under Part VI of this Act),—

(*a*) shall take into consideration any representations made to them by persons appearing to them to have a substantial interest in the subject-matter of the reference, or by bodies appearing to them to represent substantial numbers of persons who have such an interest, and

(*b*) unless in all the circumstances they consider it not reasonably necessary or not reasonably practicable to do so, shall permit any such person or body to be heard orally by the Advisory Committee or the Commission, as the case may be, or by a member of the Committee or of the Commission nominated by them for that purpose.

(2) Subject to subsection (1) of this section, the Advisory Committee or the Commission may determine their own procedure for carrying out any investigation on a reference under this Act, and in particular may determine—

(*a*) the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise take part in the investigation, and

(*b*) the extent, if any, to which the sittings of the Advisory Committee or of the Commission are to be held in public.

(3) In determining their procedure under subsection (2) of this section, and, in the case of the Commission, in exercising any powers conferred on them by section 85 of this Act, the Advisory Committee or the Commission, as the case may be, shall act in accordance with any general directions which may from time to time be given to them by the Secretary of State.

(4) The Secretary of State shall lay before each House of Parliament a copy of any directions given by him under subsection (3) of this section.

General provisions as to reports.

82.—(1) In making any report under this Act the Advisory Committee or the Commission shall have regard to the need for excluding, so far as that is practicable,—

(*a*) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in their opinion, seriously and prejudicially affect the interests of that individual, and

(*b*) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Advisory Committee or of the Commission, as the case may be, seriously and prejudicially affect the interests of that body, unless in their opinion the inclusion of that matter relating specifically to that body is necessary for the purposes of the report.

(2) For the purposes of the law relating to defamation, absolute privilege shall attach to any report of the Advisory Committee or of the Commission under this Act.

(3) Subject to the next following subsection, if—

(*a*) on a reference to the Advisory Committee under this Act, or

(*b*) on a reference to the Commission, other than a monopoly reference limited to the facts,

a member of the Advisory Committee or of the Commission, as the case may be, dissents from any conclusions contained in the report on the reference as being conclusions of the Committee or of the Commission, the report shall, if that member so desires, include a statement of his dissent and of his reasons for dissenting.

(4) In relation to a report made by a group of members of the Commission in pursuance of paragraph 10 or paragraph 11 of Schedule 3 to this Act, subsection (3) of this section shall have effect subject to paragraph 14(1) of that Schedule.

Laying before Parliament and publication of reports.

83.—(1) The Minister or Ministers to whom any report of the Advisory Committee on a reference to which section 17 of this Act applies, or any report of the Commission under this Act, is made shall lay a copy of the report before each House of Parliament, and shall arrange for the report to be published in such manner as appears to the Minister or Ministers to be appropriate.

(2) If such a report is presented by command of Her Majesty to either House of Parliament otherwise than at or during the time of a sitting of that House, the presentation of the report shall for the purposes of this section be treated as the laying of a copy of it before that House by the Minister or Ministers to whom the report was made.

(3) If it appears to the Minister or Ministers to whom any report of the Advisory Committee or of the Commission under this Act is made that the publication of any matter in the report would be against the public interest, the Minister or Ministers shall exclude that matter from the copies of the report as laid before Parliament and from the report as published under this section.

(4) Any reference in this Act to a report of the Advisory Committee or of the Commission as laid before Parliament shall be construed as a reference to the report in the form in which copies of it are laid (or by virtue of subsection (2) of this section are treated as having been laid) before each House of Parliament under this section.

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ADDITIONAL PROVISIONS RELATING TO REFERENCES TO COMMISSION

Public interest.

84.—(1) In determining for any purposes to which this section applies whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall take into account all matters which appear to them in the particular circumstances to be relevant and, among other things, shall have regard to the desirability—

(*a*) of maintaining and promoting effective competition between persons supplying goods and services in the United Kingdom;

(*b*) of promoting the interests of consumers, purchasers and other users of goods and services in the United Kingdom in respect of the prices charged for them and in respect of their quality and the variety of goods and services supplied;

(*c*) of promoting, through competition, the reduction of costs and the development and use of new techniques and new products, and of facilitating the entry of new competitors into existing markets;

(*d*) of maintaining and promoting the balanced distribution of industry and employment in the United Kingdom; and

(*e*) of maintaining and promoting competitive activity in markets outside the United Kingdom on the part of

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producers of goods, and of suppliers of goods and services, in the United Kingdom.

(2) This section applies to the purposes of any functions of the Commission under this Act other than functions to which section 59(3) of this Act applies.

Attendance of witnesses and production of documents.

85.—(1) For the purposes of any investigation on a reference made to them under this Act the Commission may, by notice in writing signed on their behalf by any of their members or by their secretary,—

(*a*) require any person to attend at a time and place specified in the notice, and to give evidence to the Commission or a member of the Commission nominated by them for the purpose, or

(*b*) require any person to produce, at a time and place specified in the notice, to the Commission or to any person nominated by the Commission for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation, or

(*c*) require any person carrying on any business to furnish to the Commission such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished.

(2) For the purposes of any such investigation the Commission, or a member of the Commission nominated by them for that purpose, may take evidence on oath, and for that purpose may administer oaths.

(3) No person shall be compelled for the purpose of any such investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(4) No person shall be required, in obedience to a notice under subsection (1) of this section, to go more than ten miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.

(5) Any person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

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(6) Any person who—

(*a*) wilfully alters, suppresses or destroys any document which he has been required by any such notice to produce, or

(*b*) in furnishing any estimate, return or other information required of him under any such notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(7) If a person makes default in complying with a notice under subsection (1) of this section, the court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(8) In this section " the court "—

(*a*) in relation to England and Wales, means the High Court;

(*b*) in relation to Scotland, means the Court of Session; and

(*c*) in relation to Northern Ireland, means the High Court or a judge of the High Court.

Director to receive copies of reports

86.—(1) Subject to the next following subsection, a copy of every report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, shall be transmitted by the Commission to the Director; and the Minister or Ministers to whom any such report is made shall take account of any advice given to him or them by the Director with respect to a report of which a copy is transmitted to the Director under this section.

(2) The preceding subsection shall not apply to a report made on a monopoly reference, where the reference was made by a Minister or Ministers and (by virtue of any of the provisions of section 50 of this Act) could not have been made by the Director.

(3) In this section " Minister " includes the Minister of Agriculture for Northern Ireland and the Minister of Commerce for Northern Ireland.

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Supplementary provisions as to laying reports before Parliament.

87.—(1) Where under section 83 of this Act the Secretary of State lays before Parliament a copy of a report of the Commission on a newspaper merger reference, then—

(*a*) if before laying it the Secretary of State has consented to the transfer of a newspaper or of newspaper assets to which the report relates, he shall annex a copy of that consent to the copy of the report laid before Parliament, or

(*b*) if he subsequently consents to that transfer, he shall thereupon lay before Parliament a copy of that consent.

(2) Where the persons to whom a report of the Commission is made under this Act include the Minister of Agriculture for Northern Ireland, that Minister shall lay a copy of the report before the Senate and House of Commons of Northern Ireland, and shall arrange for it to be published in Northern Ireland in such manner as appears to him to be appropriate.

(3) If a report to which subsection (2) of this section applies is presented by command of the Governor of Northern Ireland to the Senate or House of Commons of Northern Ireland otherwise than at or during the time of a sitting of the Senate or of that House, as the case may be, the presentation of the report shall for the purposes of that subsection be treated as the laying of a copy of it before the Senate or that House as required by that subsection.

Action by Director in consequence of report of Commission on monopoly or merger reference.

88.—(1) Where a report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, as laid before Parliament,—

(*a*) in the case of a monopoly reference, sets out such conclusions as are mentioned in section 56(1) of this Act, or

(*b*) in the case of a merger reference, sets out such conclusions as are mentioned in section 73(1) or in section 75(4)(*e*) of this Act,

and a copy of the report is transmitted to the Director under section 86 of this Act, it shall be the duty of the Director, if requested by the appropriate Minister or Ministers to do so, to consult the relevant parties with a view to obtaining from them undertakings to take action indicated in the request made to the Director as being action requisite, in the opinion of the appropriate Minister or Ministers, for the purpose of remedying or preventing the adverse effects specified in the report.

(2) The Director shall report to the appropriate Minister or Ministers the outcome of his consultations under the preceding subsection; and if any undertaking is given by any of the relevant parties to take action indicated in the request made to the Director as mentioned in that subsection (in this section referred to as an "appropriate undertaking") the Minister to whom the undertaking is given shall furnish particulars of it to the Director.

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(3) Where in his consultations under subsection (1) of this section the Director seeks to obtain an appropriate undertaking from any of the relevant parties, and either—

(*a*) he is satisfied that no such undertaking is likely to be given by that party within a reasonable time, or

(*b*) having allowed such time as in his opinion is reasonable for the purpose, he is satisfied that no such undertaking has been given by that party,

the Director shall give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances (including, if the Director thinks fit, advice with respect to the exercise by the appropriate Minister or Ministers of his or their powers under section 56 or section 73 of this Act, as the case may be).

(4) Where the Director has made a report under subsection (2) of this section, and particulars of an undertaking given by any of the relevant parties have been furnished to the Director in accordance with that subsection, it shall be the duty of the Director—

(*a*) to keep under review the carrying out of that undertaking, and from time to time to consider whether, by reason of any change of circumstances, it needs to be varied or to be superseded by a new undertaking, and

(*b*) if it appears to him that it has not been or is not being fulfilled, or needs to be varied or superseded, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.

(5) Where, in consequence of a report of which a copy is transmitted to the Director under section 86 of this Act, an order is made under section 56 or section 73 of this Act in relation to any of the matters to which the report relates, it shall be the duty of the Director to keep under review the action (if any) taken in compliance with that order, and from time to time to consider whether, by reason of any change of circumstances, the order should be varied or should be superseded by a new order, and—

(*a*) if it appears to him that the order has in any respect not been complied with, to consider whether any action (by way of proceedings in accordance with section 93 of this Act or otherwise) should be taken for the purpose of securing compliance with the order, and (where in his opinion it is appropriate to do so) to take such action himself or give advice to any Minister or other person by whom such action might be taken, or

(*b*) if it appears to him that the order needs to be varied, or to be superseded by a new order, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.

(6) In this section " the relevant parties "—

(*a*) in relation to a report of the Commission on a monopoly reference, means the person or persons specified in the report as being the person or persons in whose favour the monopoly situation in question exists ;

(*b*) in relation to a report of the Commission on a merger reference under section 75 of this Act, which includes a finding that a merger situation qualifying for investigation will be created if the arrangements in question are carried into effect, means any person indicated in the report as being a person by whom in accordance with the arrangements any assets are to be taken over ;

(*c*) in relation to a report of the Commission on a merger reference, other than a newspaper merger reference or a reference falling within paragraph (*b*) of this subsection, means the persons specified in the report as being persons carrying on, owning or controlling any of the enterprises which, in accordance with the conclusions of the Commission, have ceased to be distinct enterprises ;

and, in relation to a report of the Commission, " the appropriate Minister or Ministers " means the Minister or Ministers to whom the report is made, " undertaking " means an undertaking given to that Minister or to one of those Ministers, as the case may be, and, in subsections (3) and (5) of this section, the references to section 73 of this Act shall be construed as including references to that section as applied by section 75(4) of this Act.

Interim order after report of Commission under s. 54 or s. 72.

89.—(1) The provisions of this section shall have effect where—

(*a*) in the circumstances specified in subsection (1) of section 56 of this Act the Secretary of State makes, or has under consideration the making of, an order under that section exercising any of the powers specified in Part II of Schedule 8 to this Act, or

(*b*) in the circumstances specified in subsection (1) of section 73 of this Act the Secretary of State makes, or

has under consideration the making of, an order under that section exercising any of those powers ;

and in those provisions " the principal order " means the order which the Secretary of State makes, or has it under consideration to make, as mentioned in paragraph (*a*) or paragraph (*b*) of this subsection.

(2) With a view to achieving the purpose for which any of the powers specified in Part II of that Schedule are, or are proposed to be, exercised by the principal order, the Secretary of State may by order made by statutory instrument exercise any of the powers mentioned in the next following subsection.

(3) An order under this section may—

(*a*) prohibit or restrict the doing of things which, in the opinion of the Secretary of State, might impede the operation of the principal order or, where it has not yet been made, might be an impediment to making it ;

(*b*) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets ;

(*c*) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order under this section) or in any other manner.

General provisions as to orders under ss. 56, 73, 74 and 89.

90.—(1) This section applies to any order under section 56, section 73, section 74 or section 89 of this Act.

(2) Any such order declaring anything to be unlawful may declare it to be unlawful either for all persons or for such persons as may be specified or described in the order.

(3) Nothing in any such order shall have effect so as to apply to any person in relation to his conduct outside the United Kingdom unless that person is—

(*a*) a citizen of the United Kingdom and Colonies, or

(*b*) a body corporate incorporated under the law of the United Kingdom or of a part of the United Kingdom, or

(*c*) a person carrying on business in the United Kingdom, either alone or in partnership with one or more other persons,

but, in the case of a person falling within paragraph (*a*), paragraph (*b*) or paragraph (*c*) of this subsection, any such order may extend to acts or omissions outside the United Kingdom.

(4) An order to which this section applies may extend so as to prohibit the carrying out of agreements already in existence on the date on which the order is made.

(5) Nothing in any order to which this section applies shall have effect so as to restrict the doing of anything for the purpose of restraining an infringement of a United Kingdom patent or so as to restrict any person as to the conditions which he attaches to a licence to do anything the doing of which would, but for the licence, be an infringement of a United Kingdom patent.

1958 c. 47.
1964 c. 13 (N.I.).

(6) Nothing in any such order shall affect the conduct of a board established under a scheme made under the Agricultural Marketing Act 1958 or under the Agricultural Marketing Act (Northern Ireland) 1964.

(7) An order to which this section applies may authorise the Minister making the order to give directions to a person specified in the directions, or to the holder for the time being of an office so specified in any company or association,—

(*a*) to take such steps within his competence as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, the order, or

(*b*) to do or refrain from doing anything so specified or described which he might be required by the order to do or refrain from doing,

and may authorise that Minister to vary or revoke any directions so given.

Procedure relating to orders to which s. 90 applies.

91.—(1) No order to which section 90 of this Act applies and which exercises any of the powers specified in Part II of Schedule 8 to this Act, and no order varying or revoking any such order, shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament ; and the provisions of Schedule 9 to this Act shall have effect with respect to the procedure to be followed before laying before Parliament a draft of any such order.

(2) Before making any order under section 56 or section 73 of this Act other than any such order as is mentioned in the preceding subsection, the Minister proposing to make the order shall publish, in such manner as appears to him to be appropriate, a notice—

(*a*) stating his intention to make the order ;

(*b*) indicating the nature of the provisions to be embodied in the order ; and

(*c*) stating that any person whose interests are likely to be affected by the order, and who is desirous of making representations in respect of it, should do so in writing (stating his interest and the grounds on which he wishes to make the representations) before a date specified in the notice (that date being not earlier than the end

of the period of thirty days beginning with the day on which publication of the notice is completed) ;

and the Minister shall not make the order before the date specified in the notice in accordance with paragraph (*c*) of this subsection and shall consider any representations duly made to him in accordance with the notice before that date.

Investigation of company or association with reference to order to which s. 90 applies.

92.—(1) For the purpose of determining whether to make an order to which section 90 of this Act applies whereby any powers are to be exercised in relation to a company or association, or for the purpose of obtaining information on which to exercise by or under any such order any powers in relation to a company or association, the Secretary of State may appoint an inspector to investigate and report to him on any such matters falling within the next following subsection as are specified or described in the appointment.

1948 c. 38.

(2) The matters which may be so specified or described are any matters which, in the case of a company registered under the Companies Act 1948,—

(*a*) could in accordance with sections 165 and 166 of that Act be investigated by an inspector appointed under section 165 of that Act, or

(*b*) could in accordance with section 172 of that Act, or in accordance with any provisions as applied by subsection (5) of that section, be investigated by an inspector appointed under that section.

(3) For purposes connected with any investigation made by an inspector appointed under this section—

1948 c. 38.

(*a*) section 167 (or that section as applied by section 172(5)) of the Companies Act 1948 shall have effect as it has effect for the purposes of any investigation under section 165 or section 172 of that Act, and

(*b*) the provisions of that Act referred to in this and the last preceding subsection shall be taken to extend throughout the United Kingdom.

Enforcement of orders to which s. 90 applies.

93.—(1) No criminal proceedings shall, by virtue of the making of an order to which section 90 of this Act applies, lie against any person on the grounds that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.

(2) Nothing in the preceding subsection shall limit any right of any person to bring civil proceedings in respect of any contravention or apprehended contravention of any such order, and (without prejudice to the generality of the preceding words)

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employer under a contract of employment, but, with those exceptions, includes engagements (whether professional or other) which for gain or reward are undertaken and performed for any matter other than the production or supply of goods, and any reference to the supply of services or to supplying, obtaining or offering services or to making services available shall be construed accordingly.

(2) In this Part of this Act and in the modifications made by it " business " includes a professional practice.

(3) Subsection (3) of section 6 (which relates to the meaning of " agreement " and " restriction ") and subsections (1) to (3) of section 36 (interpretation) of the Act of 1956 shall have effect for the purposes of this Part of this Act and of the modifications made by it.

(4) For the purposes of this Part of this Act any two or more interconnected bodies corporate, or any two or more individuals carrying on business in partnership with each other, shall be treated as a single person.

(5) In this section any reference to the modifications made by this Part of this Act is a reference to any provisions which by virtue of section 116 of this Act (whether they are provisions set out in that section or in Schedule 10 to this Act) are to be treated, for purposes mentioned in that section, as substituted for provisions of the Act of 1956 or of the Act of 1968.

PART XI

PYRAMID SELLING AND SIMILAR TRADING SCHEMES

Trading schemes to which Part XI applies.

118.—(1) This Part of this Act applies to any trading scheme which includes the following elements, that is to say—

(*a*) goods or services, or both, are to be provided by the person promoting the scheme (in this Part of this Act referred to as " the promoter ") or, in the case of a scheme promoted by two or more persons acting in concert (in this Part of this Act referred to as " the promoters "), are to be provided by one or more of those persons;

(*b*) the goods or services so provided are to be supplied to or for other persons under transactions effected by persons (other than the promoter or any of the promoters) who participate in the scheme (each of whom is in this Part of this Act referred to as a " participant ");

(*c*) those transactions, or most of them, are to be effected elsewhere than at premises at which the promoter or any of the promoters or the participant effecting the transaction carries on business; and

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(*d*) the prospect is held out to participants of receiving payments or other benefits in respect of any one or more of the matters specified in the next following subsection.

(2) The matters referred to in paragraph (*d*) of subsection (1) of this section are—

(*a*) the introduction of other persons who become participants;

(*b*) the promotion, transfer or other change of status of participants within the trading scheme;

(*c*) the supply of goods to other participants;

(*d*) the supply of training facilities or other services for other participants;

(*e*) transactions effected by other participants under which goods are to be supplied to, or services are to be supplied for, other persons.

(3) For the purposes of this Part of this Act a trading scheme shall be taken to include the element referred to in paragraph (*b*) of subsection (1) of this section whether the transactions referred to in that paragraph are to be effected by participants in the capacity of servants or agents of the promoter or of one of the promoters or in any other capacity.

(4) In determining, for the purposes of paragraph (*c*) of subsection (1) of this section, whether any premises are premises at which a participant in a trading scheme carries on business, no account shall be taken of transactions effected or to be effected by him under that trading scheme.

(5) For the purposes of this Part of this Act such a prospect as is mentioned in paragraph (*d*) of subsection (1) of this section shall be taken to be held out to a participant—

(*a*) whether it is held out so as to confer on him a legally enforceable right or not, and

(*b*) in so far as it relates to the introduction of new participants, whether it is limited to the introduction of new participants by him or extends to the introduction of new participants by other persons.

(6) In this Part of this Act " trading scheme " includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not.

(7) In this section any reference to the provision of goods or services by a person shall be construed as including a reference to the provision of goods or services under arrangements to which that person is a party.

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Regulations relating to such trading schemes.

119.—(1) Regulations made by the Secretary of State by statutory instrument may make provision with respect to the issue, circulation or distribution of documents, whether being advertisements, prospectuses, circulars or notices, which—

(*a*) contain any invitation to persons to become participants in a trading scheme to which this Part of this Act applies, or

(*b*) contain any information calculated to lead directly or indirectly to persons becoming participants in such a trading scheme,

and may prohibit any such document from being issued, circulated or distributed unless it complies with such requirements as to the matters to be included or not included in it as may be prescribed by the regulations.

(2) Regulations made by the Secretary of State by statutory instrument may prohibit the promoter or any of the promoters of, or any participant in, a trading scheme to which this Part of this Act applies from—

(*a*) supplying any goods to a participant in the trading scheme, or

(*b*) supplying any training facilities or other services for such a participant, or

(*c*) providing any goods or services under a transaction effected by such a participant, or

(*d*) being a party to any arrangements under which goods or services are supplied or provided as mentioned in any of the preceding paragraphs, or

(*e*) accepting from any such participant any payment, or any undertaking to make a payment, in respect of any goods or services supplied or provided as mentioned in any of paragraphs (*a*) to (*d*) of this subsection or in respect of any goods or services to be so supplied or provided,

unless (in any such case) such requirements are as prescribed by the regulations are complied with.

(3) Any requirements prescribed by regulations under subsection (2) of this section shall be such as the Secretary of State considers necessary or expedient for the purpose of preventing participants in trading schemes to which this Part of this Act applies from being unfairly treated; and, without prejudice to the generality of this subsection, any such requirements may include provisions—

(*a*) requiring the rights and obligations of every participant under such a trading scheme to be set out in full in an agreement in writing made between the participant and the promoter or (if more than one) each of the promoters;

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(*b*) specifying rights required to be conferred on every such participant, and obligations required to be assumed by the promoter or promoters, under any such trading scheme; or

(*c*) imposing restrictions on the liabilities to be incurred by such a participant in respect of any of the matters mentioned in paragraphs (*a*) to (*e*) of subsection (2) of this section.

(4) Regulations made under subsection (2) of this section—

(*a*) may include provision for enabling a person who has made a payment as a participant in a trading scheme to which this Part of this Act applies, in circumstances where any of the requirements prescribed by the regulations were not complied with, to recover the whole or part of that payment from any person to whom or for whose benefit it was paid, and

(*b*) subject to any provision made in accordance with the preceding paragraph, may prescribe the degree to which anything done in contravention of the regulations is to be treated as valid or invalid for the purposes of any civil proceedings.

(5) The power to make regulations under this section may be exercised so as to make different provision—

(*a*) in relation to different descriptions of trading schemes to which this Part of this Act applies, or

(*b*) in relation to trading schemes which are or were in operation on a date specified in the regulations and trading schemes which are or were not in operation on that date,

or in relation to different descriptions of participants in such trading schemes.

Offences under Part XI.

120.—(1) Subject to the next following section, any person who issues, circulates or distributes, or causes another person to issue, circulate or distribute, a document in contravention of any regulations made under subsection (1) of section 119 of this Act shall be guilty of an offence.

(2) Any person who contravenes any regulations made under subsection (2) of that section shall be guilty of an offence.

(3) If any person who is a participant in a trading scheme to which this Part of this Act applies, or has applied or been invited to become a participant in such a trading scheme,—

(*a*) makes any payment to or for the benefit of the promoter or (if there is more than one) any of the promoters, or to or for the benefit of a participant in the trading scheme, and

(2) Part I of the Act of 1956 shall not apply by virtue of any such order to an agreement to which there are no parties other than one person who agrees to supply services and another person for whom they are to be supplied, where neither of those persons is, in relation to that order, such an association as is mentioned in section 112(1) of this Act and, except in respect of the supply of services of the same description to, or obtaining services of the same description from, other persons,—

(*a*) in the case of an order under section 107 of this Act, no restrictions are accepted under the agreement by those parties in respect of matters specified in the order for the purposes of subsection (1)(*b*) of that section, or

(*b*) in the case of an order under section 108 of this Act, no provision is made under the agreement for or in relation to the furnishing of information with respect to matters specified in the order for the purpose of subsection (1)(*b*) of that section.

(3) Subject to the next following subsection, Part I of the Act of 1956 shall not apply by virtue of any such order to any licence granted by the proprietor or any licensee of a patent or by a person who has applied for a patent, to any assignment of a patent or of the right to apply for a patent, or to any agreement for such a licence or assignment, if it is a licence, assignment or agreement under which—

(*a*) in the case of an order under section 107 of this Act, no restrictions in respect of matters specified in the order for the purposes of subsection (1)(*b*) of that section are accepted except in respect of the invention to which the patent or application for a patent relates, or

(*b*) in the case of an order under section 108 of this Act, no provision for or in relation to the furnishing of information with respect to matters specified in the order for the purposes of subsection (1)(*b*) of that section is made except in respect of that invention.

(4) No licence, assignment or agreement shall by virtue of subsection (3) of this section be precluded from being an agreement to which Part I of the Act of 1956 applies if—

(*a*) in the case of an agreement, it is a patent or design pooling agreement, or

(*b*) whether being a licence, assignment or agreement, it is a licence, assignment or agreement granted or made in pursuance (directly or indirectly) of a patent or design pooling agreement.

(5) Part I of the Act of 1956 shall not apply by virtue of any order under section 107 of this Act to an agreement between two persons, neither of whom is such an association as is mentioned in section 112(1) of this Act, for the exchange of information relating to techniques or processes to be applied in the provision of designated services where—

(*a*) no other person is party to the agreement, and

(*b*) all such restrictions as are mentioned in section 107(1)(*b*) of this Act which are accepted under the agreement relate exclusively to the form or manner in which services incorporating those techniques or processes are to be made available or supplied.

(6) Part I of the Act of 1956 shall not apply by virtue of any such order to any agreement where—

(*a*) in the case of an order under section 107 of this Act, all such restrictions as are accepted under the agreement in respect of matters specified in the order for the purposes of subsection (1)(*b*) of that section (or, in a case falling within subsection (3) of section 112 of this Act, all the recommendations referred to in that subsection) relate to the supply of services outside the United Kingdom or to the supply of services to persons or in relation to property outside the United Kingdom, or

(*b*) in the case of an order under section 108 of this Act, all such provision as is made under the agreement for or in relation to the furnishing of information with respect to matters specified in the order for the purposes of subsection (1)(*b*) of that section (or, in a case falling within subsection (4) of section 112 of this Act, every such recommendation as is referred to in that subsection) relates to the supply of services as mentioned in the preceding paragraph.

(7) Any reference in this section to restrictions accepted in respect of matters specified in an order under section 107 of this Act for the purposes of subsection (1)(*b*) of that section, or to provision made for or in relation to the furnishing of information with respect to matters specified in an order under section 108 of this Act for the purposes of subsection (1)(*b*) of that section, shall be construed, in relation to any agreement, as not including anything of which, by virtue of section 114 of this Act, account cannot be taken for the purpose mentioned in subsection (1) of that section.

(8) Subsections (2) to (4) of section 8A of the Act of 1956 shall have effect for the purposes of this section as they have effect for the purposes of that section.

(9) In this section " property " means property of any description, whether movable or immovable.

PART X

Application of provisions of Acts of 1956 and 1968.

116.—(1) Subject to the following provisions of this section, sections 9 to 23 of the Act of 1956 shall have effect in relation to agreements to which Part I of that Act applies by virtue of an order under section 107 or section 108 of this Act as they have effect in relation to agreements to which Part I of that Act applies apart from any such order.

(2) For the purposes of the application of those sections in relation to an agreement to which Part I of that Act applies by virtue of such an order, such of those sections as are specified in the first column of Part I of Schedule 10 to this Act shall have effect subject to the modifications specified in relation to them in the second column of that Part of that Schedule.

(3) For the purposes of the application of section 21 of that Act in relation to an agreement to which Part I of that Act applies by virtue of such an order, that section shall have effect subject to the following modifications, that is to say—

(*a*) with the substitution, for paragraphs (*a*) and (*b*) of subsection (1), of the following paragraphs:—

" (*a*) that the restriction is reasonably necessary, having regard to the character of the services to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the use of those services or in connection with the consumption, installation or use of goods in relation to which those services are supplied;

(*b*) that the removal of the restriction would deny to the public as users of any services, or as purchasers, consumers or users of any goods in relation to which any services are supplied, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction itself or of any arrangements or operations resulting therefrom ";

(*b*) with the substitution, for paragraph (*d*) of subsection (1), of the following paragraph:—

" (*d*) that the restriction is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of services to, or for obtaining services from, any one person not party thereto who controls a preponderant part of the trade or business of supplying such services, or for the supply of services to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such services "; and

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(*c*) with the substitution, in the provisions of that subsection after paragraph (*h*), for the words " (being purchasers, consumers or users of goods produced or sold by such parties, or persons engaged or seeking to become engaged in the trade or business of selling such goods or of producing or selling similar goods) " of the words " (being users of services supplied by such parties, or persons engaged or seeking to become engaged in any business of supplying such services or of making available or supplying similar services, or being purchasers, consumers or users of goods in relation to which any such services or similar services are supplied) ".

(4) Sections 1 to 3 and sections 6 and 7 of the Act of 1968 shall have effect in relation to agreements to which Part I of the Act of 1956 applies by virtue of an order under section 107 or section 108 of this Act, but, in the case of such of those sections as are specified in the first column of Part II of Schedule 10 to this Act, shall have effect in relation to such agreements subject to the modifications specified in relation to them in the second column of that Part of that Schedule.

(5) In section 9 of the Act of 1968 any reference to particulars entered or filed in the register pursuant to Part I of the Act of 1956 shall be construed as including a reference to particulars so entered or filed pursuant to any provisions of Part I of the Act of 1956 as applied by subsection (1) of this section.

(6) Any reference in this section to any provisions of the Act of 1956 shall be construed as including a reference to those provisions as applied by section 5(2) of the Act of 1968 (which relates to information agreements); and the modifications of section 21 of the Act of 1956 made by subsection (3) of this section shall be construed accordingly.

(7) Where by virtue of subsection (2) or subsection (4) of this section any provisions of the Act of 1956 or of the Act of 1968 are to have effect subject to modifications specified in Schedule 10 to this Act for the purposes of their application to an agreement to which Part I of the Act of 1956 applies by virtue of an order under section 107 or section 108 of this Act—

(*a*) that order shall be taken to be " the relevant order " referred to in those modifications, and

(*b*) in those modifications " the Act of 1973 " means this Act and " services brought under control by the relevant order " means services of the class described in that order in accordance with section 107(1) or section 108(1) of this Act.

Interpretation of Part X and Schedule 10.

117.—(1) In this Part of this Act, and in the modifications made by it, " services " does not include the application to goods of any process of manufacture or any services rendered to an

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compliance with any such order shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.

(3) If any person makes default in complying with any directions given under section 90(7) of this Act, the court may, on the application of the Secretary of State, make an order requiring him to make good the default within a time specified in the order, or, if the directions related to anything to be done in the management or administration of a company or association, requiring the company or association or any officer of it to do so.

(4) Any order of the court under subsection (3) of this section may provide that all the costs or expenses of or incidental to the application for the order shall be borne by any person in default or by any officers of a company or association who are responsible for its default.

(5) In this section " the court "—

(*a*) in relation to England and Wales, means the High Court;

(*b*) in relation to Scotland, means the Court of Session; and

(*c*) in relation to Northern Ireland, means the High Court or a judge of the High Court.

PART IX

AMENDMENTS OF RESTRICTIVE TRADE PRACTICES ACTS

Transfer of functions of Registrar to Director.

94.—(1) Subject to the transitional provisions having effect by virtue of section 139 of this Act, the functions of the Registrar of Restrictive Trading Agreements are hereby transferred to the Director, and the office of Registrar of Restrictive Trading Agreements is hereby abolished.

(2) In accordance with the preceding subsection, but without prejudice to any amendment made by any other provisions of this Act, in the Act of 1956, the Act of 1964 and the Act of 1968, for the words " the Registrar " or the words " the Registrar of Restrictive Trading Agreements ", in each place where they occur, there shall be substituted the words " the Director ".

Agreements as to prices to be recommended or suggested for resale of goods.

95. Section 6(1) of the Act of 1956 (which provides for agreements under which restrictions are accepted on certain matters to be subject to Part I of the Act) and section 5(1) of the Act of 1968 (which makes similar provision in relation to information agreements) shall each be amended by inserting the following paragraph after paragraph (*a*):—

" (*aa*) the prices to be recommended or suggested as the prices to be charged or quoted in respect of the resale of goods supplied ".

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Subscriptions to trade associations.

96. In section 6 of the Act of 1956 (agreements to which Part I applies), after subsection (5) (which relates to obligations to make payments calculated by reference to certain variable factors) there shall be inserted the following proviso:—

" Provided that this subsection does not apply to any obligation on the part of any person to make payments to a trade association of which he is a member, if the payments are to consist only of bona fide subscriptions for membership of the association ".

" Trade association " not to include certain approved societies.

97. In section 6(8) of the Act of 1956 (which contains a definition of " trade association "), after the words " or of persons represented by its members " there shall be inserted the words " and which is not a society for the time being approved under section 6A of this Act ".

Wholesale co-operative societies.

98. After section 6 of the Act of 1956 there shall be inserted the following section:—

" 6A.—(1) The Secretary of State may approve under this section any industrial and provident society which in his opinion fulfils the following conditions, that is to say—

(*a*) that it carries on business in the production or supply of goods or in the supply of services or in the application to goods of any process of manufacture;

(*b*) that its shares are wholly or mainly held by industrial and provident societies; and

(*c*) that those societies are retail societies or societies whose shares are wholly or mainly held by retail societies.

(2) An approval given in respect of a society under this section shall (if it has not been previously withdrawn) expire at the end of the period of two years beginning with the date on which it was given or, if that period is extended (once or more than once) under the next following subsection, at the end of that period as so extended, or further extended, as the case may be.

(3) The Secretary of State may extend or, if it has already been extended under this subsection, may further extend the period of two years referred to in subsection (2) of this section by such period, not exceeding two years, as he may specify.

(4) The Secretary of State may at any time withdraw an approval given in respect of a society under this section if it appears to him—

(*a*) that the society has made an agreement which would have been subject to registration under this

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Part of this Act if the approval had not been given, or that such a recommendation as is mentioned in section 6(7) of this Act has been made by or on behalf of the society, and

(*b*) that the agreement or recommendation has such adverse effects on competition that it should not be precluded from being investigated by the Court under the following provisions of this Part of this Act.

(5) On the expiry or withdrawal of an approval given in respect of a society under this section, the provisions of this Part of this Act shall have effect in relation to agreements and recommendations made by the society during the currency of the approval as if the society had not been approved under this section

(6) In this section—

" industrial and provident society " means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or under the corresponding law in Northern Ireland ;

1965 c. 12.

" retail society " means a society which carries on business in the sale by retail of goods for the domestic or personal use of individuals dealing with the society, or in the provision of services for such individuals ;

" the corresponding law in Northern Ireland " means the law for the time being in force in Northern Ireland for purposes corresponding to those of the Industrial and Provident Societies Act 1965 ".

Agreements relating to coal or steel.

99. In section 7 of the Act of 1956, before subsection (2) there shall be inserted the following subsections:—

" (1A) In determining whether an agreement is an agreement to which this Part of this Act applies, where—

(*a*) the parties to the agreement are or include two or more bodies to which this subsection applies, and

(*b*) restrictions relating to coal or steel, or relating to both coal and steel, are accepted under the agreement by two or more such bodies, whether the restrictions so accepted by those bodies are the same restrictions or different restrictions,

no account shall be taken of any such restriction which is accepted under the agreement by a body to which this subsection applies, whether that restriction is also accepted by any other party to the agreement or not.

(1B) Subsection (1A) of this section applies to any body which, in accordance with Article 80 of the E.C.S.C. Treaty, constitutes an undertaking for the purposes of Articles 65 and 66 of that Treaty, and in that subsection " coal " and " steel " have the meanings assigned to them respectively by Annex I to that Treaty."

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Agreements to comply with standards of performance.

100. In section 7(3) of the Act of 1956 (which makes provision as to agreements to comply with standards of dimension, design or quality) in paragraph (*a*), for the words " or quality " there shall be substituted the words " quality or performance ".

Patent or design pooling agreements.

101. In section 8 of the Act of 1956, at the beginning of subsection (4) there shall be inserted the words " Subject to section 8A of this Act " ; and after that section there shall be inserted the following section:—

" 8A.—(1) No licence, assignment or agreement shall by virtue of section 8(4) of this Act be precluded from being an agreement to which Part I of this Act applies if—

(*a*) in the case of an agreement, it is a patent or design pooling agreement, or

(*b*) whether being a licence, assignment or agreement, it is a licence, assignment or agreement granted or made in pursuance (directly or indirectly) of a patent or design pooling agreement.

(2) In this section (subject to subsection (4)) ' patent or design pooling agreement ' means an agreement to which the parties are or include at least three persons (in this subsection referred to as ' principal parties ') each of whom has an interest in one or more patents or registered designs, whereby each of the principal parties agrees, in respect of patents or registered designs in which he has an interest, or in respect of patents or registered designs in which he has or may during the currency of the agreement acquire an interest,—

(*a*) to grant an interest in one or more such patents or registered designs to one or more of the other principal parties, or to one or more of those parties and to other persons, or

(*b*) to grant an interest in at least one such patent or registered design to a third person for the purpose of enabling that person to grant an interest in it to one or more of the other principal parties, or to one or more of those parties and to other persons,

and ' interest ', in relation to a patent or registered design, mean an interest as proprietor or licensee of the patent or registered design or an interest consisting of such rights as a person has by virtue of having applied for a patent or for the registration of a design or by virtue of having acquired the right to apply for a patent or for the registration of a design.

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section, as "services brought under control by the order") and direct by the order that, subject to the following provisions of this Part of this Act, the agreements to which Part I of the Act of 1956 applies shall include agreements, whether made before or after the passing of this Act and whether before or after the making of the order, which—

(*a*) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties, and

(*b*) are agreements under which restrictions, in respect of matters specified in the order for the purposes of this paragraph, are accepted by two or more parties.

(2) A class of services described in an order under this section, as being the services brought under control by the order, may consist—

(*a*) of services of one or more descriptions specified in that behalf in the order, or

(*b*) of all services except services of one or more descriptions so specified, or

(*c*) of all services without exception.

(3) The matters which may be specified in such an order for the purposes of subsection (1)(*b*) of this section are any of the following, that is to say—

(*a*) the charges to be made, quoted or paid for designated services supplied, offered or obtained;

(*b*) the terms or conditions on or subject to which designated services are to be supplied or obtained;

(*c*) the extent (if any) to which, or the scale (if any) on which, designated services are to be made available, supplied or obtained;

(*d*) the form or manner in which designated services are to be made available, supplied or obtained;

(*e*) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services are to be made available or supplied or are to be obtained.

Order bringing under control information agreements relating to services.

108.—(1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as "services brought under control by the order") and direct by the order that, subject to the following provisions of this Part of this Act, the agreements to which Part I of the Act of 1956 applies shall include agreements, whether made before or after the passing of this Act and whether before or after the making of the order, which—

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(*a*) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties, and

(*b*) are agreements under which provision is made for or in relation to the furnishing by two or more parties to each other or to other persons (whether parties or not) of information with respect to matters specified in the order for the purposes of this paragraph.

(2) A class of services described in an order under this section, as being the services brought under control by the order may consist—

(*a*) of services of one or more descriptions specified in that behalf in the order, or

(*b*) of all services except services of one or more descriptions so specified, or

(*c*) of all services without exception.

(3) The matters which may be specified in such an order for the purposes of subsection (1)(*b*) of this section are any of the following, that is to say—

(*a*) the charges made, quoted or paid or to be made, quoted or paid for designated services which have been or are to be supplied, offered or obtained;

(*b*) the terms or conditions on or subject to which designated services have been or are to be supplied or obtained;

(*c*) the extent (if any) to which, or the scale (if any) on which, designated services have been or are to be made available, supplied or obtained;

(*d*) the form or manner in which designated services have been or are to be made available, supplied or obtained;

(*e*) the costs incurred or to be incurred in making available, supplying or obtaining designated services;

(*f*) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services have been or are to be made available or supplied or have been or are to be obtained.

Designated services.

109.—(1) In relation to any order made under section 107 or section 108 of this Act, "designated services" in this Part of this Act means services of any class described in the order as being designated services.

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(2) Subject to the next following subsection, a class of services described in any such order as being designated services may consist wholly or partly of services brought under control by the order or wholly or partly of other services, and may be described so as to consist—

(*a*) of services of one or more descriptions specified in that behalf in the order, or

(*b*) of all services except services of one or more descriptions so specified,

and different classes of services may be so described in relation to different matters specified in the order for the purposes of section 107(1)(*b*) or section 108(1)(*b*) of this Act, as the case may be.

(3) A class of services described in such an order as being designated services shall not include any of the services specified in Schedule 4 to this Act.

Supplementary provisions as to orders under s. 107 or s. 108.

110.—(1) An order under section 107 or section 108 of this Act may limit the operation of the order to agreements fulfilling such conditions (in addition to those mentioned in section 107 or section 108, as the case may be) as may be specified in the order.

(2) In particular, but without prejudice to the generality of the preceding subsection, an order under section 108 of this Act may limit the operation of the order to agreements under which the provision for the furnishing of information (as mentioned in subsection (1)(*b*) of that section) is provision of a kind specified in the order or provides for the furnishing of information of a kind so specified.

(3) Subject to subsection (1) of this section—

(*a*) for the purposes of any order under section 107 of this Act it is immaterial whether any restrictions accepted by parties to an agreement relate to the same or to different matters specified in the order for the purposes of subsection (1)(*b*) of that section, or have the same or a different effect in relation to any matter so specified, and

(*b*) for the purposes of any order under section 108 of this Act it is immaterial whether any provision made by an agreement for or in relation to the furnishing of information relates to the same or to different matters specified in the order for the purposes of subsection (1)(*b*) of that section,

and it is immaterial for those purposes whether the parties accepting any restrictions, or the parties by whom any information is to be furnished, as the case may be, carry on the same class or different classes of business.

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(4) Where, at a time when an order under section 107 or section 108 of this Act (in this subsection referred to as " the earlier order ") is in force, another order (in this subsection referred to as " the subsequent order ") is made under the same section, the subsequent order may provide that—

(*a*) for the purposes of the earlier order, or

(*b*) for the purposes of the subsequent order, or

(*c*) for the purposes of both orders,

the condition specified in subsection (1)(*a*) of section 107 or in subsection (1)(*a*) of section 108 of this Act, as the case may be, shall be treated as fulfilled in relation to an agreement if it is an agreement to which the parties are or include one person carrying on business in the United Kingdom in the supply of services brought under control by the earlier order and one person carrying on business within the United Kingdom in the supply of services brought under control by the subsequent order.

(5) Subsection (4) of this section shall have effect without prejudice to any power to vary any order made under section 107 or section 108 of this Act.

(6) In the following provisions of this Part of this Act " the relevant enactments ", in relation to an order under section 107 or section 108 of this Act, means the provisions of this Part of this Act (including whichever of those sections is applicable) as they have effect in relation to that order and the provisions of the Act of 1956 and of the Act of 1968 as applied in relation to that order by the following provisions of this Part of this Act.

Procedure in relation to orders under s. 107 or s. 108.

111.—(1) No order shall be made under section 107 or section 108 of this Act unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(2) Before laying before Parliament a draft of any such order, the Secretary of State shall publish in such manner as he thinks appropriate a notice—

(*a*) describing the classes of services which, if the order is made, will be services brought under control by the order and will be designated services in relation to the order respectively;

(*b*) indicating the nature of any limitation to be imposed by the order under subsection (1) or subsection (2) of section 110 of this Act; and

(*c*) specifying a period (not being less than twenty-eight days) within which representations with respect to the proposed order may be made to the Secretary of State.

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(3) For the purposes of this section a licence, assignment or agreement—

(a) shall be taken to be granted or made directly in pursuance of a patent or design pooling agreement if it is granted or made in pursuance of provisions of that agreement such as are mentioned in paragraph (a) of subsection (2) of this section, and

(b) shall be taken to be granted or made indirectly in pursuance of a patent or design pooling agreement if it is granted or made by a third person to whom an interest has been granted in pursuance of provisions of that agreement such as are mentioned in paragraph (b) of that subsection.

(4) In relation to any interest held by or granted to any two or more persons jointly, subsection (2) of this section shall apply as if those persons were one person by whom the interest is held or to whom it is granted, and accordingly those persons shall be treated for the purposes of that subsection as together constituting one party".

Particulars of export agreements to be furnished to Director.

102.—(1) The following subsection shall be added at the end of section 10 of the Act of 1956:—

"(8) Subsections (1) to (6) of this section shall have effect in relation to any agreement which—

(a) relates to exports from the United Kingdom, and

(b) would, but for section 8(8) of this Act, be an agreement subject to registration under this Part of this Act,

as if, in those subsections, any reference to an agreement being or becoming subject to such registration were a reference to its being or becoming an agreement which, but for section 8(8) of this Act, would be subject to such registration."

(2) The following subsection shall be added at the end of section 14 of the Act of 1956:—

"(4) In subsection (1) of this section the reference to an agreement subject to registration under this Part of this Act shall be construed as including a reference to any agreement which—

(a) relates to exports from the United Kingdom, and

(b) would, but for section 8(8) of this Act, be an agreement subject to registration under this Part of this Act."

(3) Subsection (1) of section 31 of the Act of 1956 (which requires particulars of agreements relating to exports to be furnished to the Secretary of State) shall cease to have effect.

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Examination on oath of certain employees of bodies corporate and unincorporated trade associations.

103.—(1) In subsection (3) of section 15 of the Act of 1956 (which in certain cases enables an order to be made for the attendance and examination on oath of an officer of a body corporate), after the words "director, manager, secretary or other officer of that body corporate" there shall be inserted the words "or of any person who (not being such a director, manager, secretary or other officer) is employed by the body corporate and appears to the Court to be likely to have particular knowledge of any of the matters in respect of which the notice was given".

(2) After that subsection there shall be inserted the following subsections:—

"(3A) The provisions of subsection (3) of this section shall have effect in relation to a trade association which is not incorporated as they have effect in relation to a body corporate.

(3B) Nothing in this section shall be taken to compel the disclosure by a barrister, advocate or solicitor of any privileged communication made by or to him in that capacity, or the production by him of any document containing any such communication."

Extension of certain powers of Restrictive Practices Court.

104.—(1) In section 20 of the Act of 1956 (jurisdiction and powers of Restrictive Practices Court), in subsection (3) (which enables the Court to make orders imposing certain restraints on parties to an agreement in respect of restrictions found by the Court to be contrary to the public interest), after the words "United Kingdom" there shall be inserted the words "any trade association of which any such person is a member or any person acting on behalf of such a trade association"; and at the end of that subsection there shall be added the words "or

(c) where such an agreement as is mentioned in paragraph (b) of this subsection has already been made, from giving effect to that agreement or enforcing or purporting to enforce it;

and, where any of the parties to the agreement against whom the order is made is a member of a trade association, the order may include provisions for restraining the trade association, and any person acting on its behalf, from procuring or assisting any such party to do anything which would be a contravention of the order in its application to him".

(2) In section 7 of the Act of 1968 (consequences of failure to register), in subsection (3) (which enables the Restrictive Practices Court to make orders imposing certain restraints on parties to an agreement of which particulars have not been duly furnished), after the words "United Kingdom" there shall be inserted the

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words "any trade association of which any such person is a member or any person acting on behalf of such a trade association", and for the word "him" there shall be substituted the words "that person or association"; and after that subsection there shall be inserted the following subsection:—

"(3A) Where an order is made under subsection (3) of this section against any party to an agreement and that party is a member of a trade association, the order may include provisions for restraining the trade association, and any person acting on its behalf, from procuring or assisting that party to do anything which would be a contravention of the order in its application to him".

Interim orders of Restrictive Practices Court.

105. After section 21 of the Act of 1956 there shall be inserted the following section:—

"21A.—(1) Where the Director has made an application in respect of an agreement under subsection (1) of section 20 of this Act, then at any time, whether before or after the Court has made a declaration under that subsection in respect of the agreement, but before the Court has made an order in respect of it under subsection (3) of that section, the Director may apply to the Court for an interim order under this section.

(2) An application under this section shall specify the restrictions which appear to the Director, in relation to the agreement to which the application relates,—

(a) to be restrictions such as are mentioned in section 20(1) of this Act, and

(b) to be contrary to the public interest, and

(c) to be restrictions in respect of which, in accordance with the following provisions of this section, it would be appropriate for an interim order to be made.

(3) If on an application under this section the Court is satisfied that the following conditions are fulfilled in relation to all or any of the restrictions specified in the application, that is to say—

(a) that they are restrictions such as are mentioned in section 20(1) of this Act;

(b) that they could not reasonably be expected to be shown to fall within any of paragraphs (a) to (h) of section 21(1) of this Act; and

(c) that the operation of the restrictions, during the period likely to elapse before an order can be made in respect of them under section 20(3) of this Act, is likely to cause material detriment to

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the public or a section of the public generally, or to a particular person who is not a party to the agreement,

the Court may, if it thinks fit, make an interim order specifying the restrictions in relation to which the Court is satisfied that those conditions are fulfilled.

(4) Any such interim order may exercise, in respect of the restrictions specified in the order, any powers which could be exercised in respect of them by an order under section 20(3) of this Act if those restrictions had been found by the Court to be contrary to the public interest.

(5) At any time when any such interim order is in force the Court, on the application of the Director or of any person who is subject to or entitled to the benefit of any restriction specified in the order, may discharge the order and substitute for it any interim order which could have been made on the original application under this section.

(6) An interim order made under this section in respect of an agreement shall cease to have effect on the occurrence of whichever of the following first occurs, that is to say—

(a) the termination of such period, or the happening of such event, as may be specified for that purpose in the order;

(b) the discharge of the order by the Court;

(c) a declaration by the Court that the restrictions specified in the interim order are not contrary to the public interest;

(d) the final determination by the Court of an application under section 20(3) of this Act in respect of that agreement."

Industrial and provident societies and their subsidiaries. 1948 c. 38. 1968 c. 55.

106. In section 36(1) of the Act of 1956, in the definition of "inter-connected bodies corporate", after the words "all other bodies corporate which are its subsidiaries within the meaning of section one hundred and fifty-four of the Companies Act 1948" there shall be inserted the words "or (in the case of an industrial and provident society) within the meaning of section 15 of the Friendly and Industrial and Provident Societies Act 1968".

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EXTENSION OF ACT OF 1956 TO AGREEMENTS RELATING TO SERVICES

Order bringing under control restrictive agreements relating to services.

107.—(1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this

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(3) In settling the draft to be laid before Parliament the Secretary of State shall take into consideration any representations with respect to the proposed order which may be received by him within the period specified in the notice in accordance with subsection (2)(*c*) of this section.

Provisions as to certain associations.

112.—(1) For the purposes of any order made under section 107 or section 108 of this Act, and for the purposes of the operation of the relevant enactments in relation to any such order, subsections (2) to (5) of this section shall have effect in relation to any association (whether incorporated or not) if—

(*a*) its membership consists wholly or mainly of persons (in this subsection referred to as " members affected by the order ") who are either engaged in the supply of services brought under control by the order or are employed by or represent persons so engaged, and

(*b*) its objects or activities include the promotion of the interests of persons engaged in the supply of those services who are either members affected by the order or are persons represented by such members, and

(*c*) it is not a society which is for the time being approved under section 6A of the Act of 1956.

(2) The relevant enactments shall have effect in relation to any agreement made by the association—

(*a*) as if the agreement were made between all persons who are members of the association or are represented on it by members of the association, and

(*b*) where any restriction is accepted under the agreement by the association, or provision is made in the agreement for or in relation to the furnishing of information by the association, as if the like restriction were accepted by, or (as the case may be) the like provision were made for or in relation to the furnishing of information by, each of the persons who are members of the association or are so represented.

(3) Where the order is one made under section 107 of this Act, and specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, as to the action to be taken or not to be taken by them in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(*b*) of that section, the relevant enactments shall have effect in relation to the agreement for the constitution of the association as if it contained a term by which each such member, and any person represented on the association by any such member, agreed to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the action to be taken by them in relation to the same class of services and in respect of the same matters.

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(4) Where the order is one made under section 108 of this Act, and specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, as to the furnishing of information in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(*b*) of that section, the relevant enactments shall have effect in relation to the agreement for the constitution of the association as if it contained a term by which each such member, and any person represented on the association by any such member, agreed to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the furnishing of information in relation to the same class of services and in respect of the same matters.

(5) Subsection (3) or subsection (4) of this section (where applicable) shall have effect in relation to the agreement for the constitution of an association notwithstanding any provision to the contrary in that agreement.

(6) In relation to a society which is for the time being approved under section 6A of the Act of 1956, but which, in consequence of an order made under section 107 or section 108 of this Act, is a society to which the preceding provisions of this section would apply if it were not so approved, subsection (4) of that section (which confers power on the Secretary of State to withdraw any such approval) shall have effect as if in that subsection—

(*a*) any reference to an agreement which would have been subject to registration under Part I of the Act of 1956 if the approval had not been given included a reference to an agreement which would in those circumstances have been subject to such registration by virtue of the order, and

(*b*) any reference to such a recommendation as is mentioned in section 6(7) of that Act included a reference to such a recommendation as is mentioned in subsection (3) or subsection (4) of this section.

Matters to be treated as equivalent to restrictions for purposes of s. 107.

113.—(1) For the purposes of any order made under section 107 of this Act, and for the purposes of the operation of the relevant enactments in relation to any such order, an agreement which—

(*a*) confers privileges or benefits only upon such parties as comply with conditions as to any such matters as are mentioned in subsection (3) of that section, or

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(*b*) imposes obligations upon parties who do not comply with such conditions,

shall be treated as an agreement under which restrictions are accepted by each of the parties in respect of those matters.

(2) Without prejudice to the preceding subsection, an obligation on the part of any party to an agreement to make payments calculated by reference to the extent to which, or the scale on which,—

(*a*) any designated services are made available or supplied by him, or

(*b*) any services are obtained by him for the purpose of making available or supplying any designated services,

if the payments are calculated, or calculated at an increased rate, in respect of an extent or scale exceeding an extent or scale specified in or ascertained in accordance with the agreement, shall, subject to the next following subsection, be treated for the purposes mentioned in the preceding subsection as a restriction in respect of the extent or scale of the designated services to be made available or supplied.

(3) Subsection (2) of this section shall not apply to any obligation on the part of any person to make payments to an association of which he is a member, if it is such an association as is mentioned in section 112(1) of this Act and the payments are to consist only of bona fide subscriptions for membership of the association.

Provisions to be disregarded.

114.—(1) The following provisions of this section shall have effect for the purpose of determining whether an agreement is one to which Part I of the Act of 1956 applies by virtue of an order made under section 107 or section 108 of this Act.

(2) Subject to subsections (3) and (4) of this section, no account shall for that purpose be taken of any term which relates exclusively to the services supplied in pursuance of the agreement in question.

(3) Where the order referred to in subsection (1) of this section is an order under section 107 of this Act, and any of the restrictions accepted as mentioned in subsection (1)(*b*) of that section are accepted as between two or more persons by whom designated services are to be supplied, or as between two or more persons for whom designated services are to be supplied, in pursuance of the agreement, subsection (2) of this section shall not apply to any term of the agreement which imposes those restrictions unless those restrictions are accepted in pursuance of a previous agreement in respect of which particulars have been registered under Part I of the Act of 1956 as applied by this Part of this Act.

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(4) Where the order referred to in subsection (1) of this section is an order made under section 108 of this Act, and the term referred to in subsection (2) of this section is a term by which provision is made for the furnishing of information as mentioned in subsection (1)(*b*) of that section by two or more persons by whom designated services are to be supplied, or by two or more persons for whom designated services are to be supplied, in pursuance of the agreement, subsection (2) of this section shall not apply to that term unless it was included in the agreement in pursuance of a previous agreement of which particulars have been registered under Part I of the Act of 1956 as applied by this Part of this Act.

(5) For the purpose mentioned in subsection (1) of this section no account shall be taken of any term by which the parties or any of them agree to comply with or apply, in respect of making available, supplying or obtaining any designated services,—

(*a*) any standards (whether being standards of performance in the provision of the services or standards of dimension, design, quality or performance in respect of goods used in providing them) which are either standards approved for the time being by the British Standards Institution or standards prescribed or adopted by an association or other body and for the time being approved by an order made by the Secretary of State by statutory instrument, or

(*b*) any arrangements either approved by the British Standards Institution, or prescribed or adopted and approved by an order of the Secretary of State, as mentioned in the preceding paragraph, as to the provision of information or advice to persons for whom designated services are supplied or agreed to be supplied.

(6) For the purpose mentioned in subsection (1) of this section no account shall be taken of any restriction which affects or relates to any of the matters mentioned in section 7(4) of the Act of 1956 (which relates to employment and to terms and conditions of employment) or of any provision for or in relation to the furnishing of information with respect to any of those matters.

Excepted agreements.

115.—(1) Subsection (1) of section 8 of the Act of 1956 (which relates to agreements expressly authorised by or under an enactment) and subsection (2) of that section (which relates to agreements constituting or forming part of a scheme certified under provisions of the Income and Corporation Taxes Act 1970 relating to schemes for rationalising industry) shall have effect in relation to any agreement notwithstanding any order under section 107 or section 108 of this Act.

1970 c. 10.

PART XI

(*b*) is induced to make that payment by reason that the prospect is held out to him of receiving payments or other benefits in respect of the introduction of other persons who become participants in the trading scheme,

any person to whom or for whose benefit that payment is made shall be guilty of an offence.

(4) If the promoter or any of the promoters of a trading scheme to which this Part of this Act applies, or any other person acting in accordance with such a trading scheme, by holding out to any person such a prospect as is mentioned in subsection (3)(*b*) of this section, attempts to induce him—

(*a*) if he is already a participant in the trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in the trading scheme, or

(*b*) if he is not already a participant in the trading scheme, to become such a participant and to make any such payment as is mentioned in the preceding paragraph,

the person attempting to induce him to make that payment shall be guilty of an offence.

(5) In determining, for the purposes of subsection (3) or subsection (4) of this section, whether an inducement or attempt to induce is made by holding out such a prospect as is therein mentioned, it shall be sufficient if such a prospect constitutes or would constitute a substantial part of the inducement.

(6) Where the person by whom an offence is committed under subsection (3) or subsection (4) of this section is not the sole promoter of the trading scheme in question, any other person who is the promoter or (as the case may be) one of the promoters of the trading scheme shall, subject to the next following section, also be guilty of that offence.

(7) Nothing in subsections (3) to (6) of this section shall be construed as limiting the circumstances in which the commission of any act may constitute an offence under subsection (1) or subsection (2) of this section.

(8) In this section any reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.

Defences in certain proceedings under Part XI.

121.—(1) Where a person is charged with an offence under subsection (1) of section 120 of this Act in respect of an advertisement, it shall be a defence for him to prove that he is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication in the ordinary course of business and did not know, and had no reason to suspect, that its publication would amount to an offence under that subsection.

PART XI

(2) Where a person is charged with an offence by virtue of subsection (6) of section 120 of this Act, it shall be a defence for him to prove—

(*a*) that the trading scheme to which the charge relates was in operation before the commencement of this Act, and

(*b*) that the act constituting the offence was committed without his consent or connivance.

Penalties for offences under Part XI.

122. A person guilty of an offence under this Part of this Act shall be liable—

(*a*) on summary conviction, to a fine not exceeding £400 or to imprisonment for a term not exceeding three months or to both;

(*b*) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

Enforcement provisions.

123.—(1) The provisions of sections 29 to 32 of this Act shall have effect for the purposes of this Part of this Act as if in those provisions—

(*a*) references to a weights and measures authority or a duly authorised officer of such an authority were omitted, and

(*b*) any reference to an offence under section 23 of this Act were a reference to an offence under this Part of this Act.

(2) For the purposes of the application to Northern Ireland of those provisions as applied by the preceding subsection—

(*a*) any reference to the Secretary of State shall be construed as a reference to the Ministry of Commerce for Northern Ireland, and

(*b*) paragraphs (*c*) and (*d*) of section 33(2) of this Act shall have effect as they have effect for the purposes of the application of Part II of this Act to Northern Ireland.

PART XII

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Publication of information and advice.

124.—(1) With respect to any matter in respect of which the Director has any duties under section 2(1) of this Act, he may arrange for the publication, in such form and in such manner as he may consider appropriate, of such information and advice as it may appear to him to be expedient to give to consumers in the United Kingdom.

PART XII

(2) In arranging for the publication of any such information or advice, the Director shall have regard to the need for excluding, so far as that is practicable,—

(*a*) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual, and

(*b*) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.

(3) Without prejudice to the exercise of his powers under subsection (1) of this section, it shall be the duty of the Director to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers in the United Kingdom.

(4) In this section "relevant association" means any association (whether incorporated or not) whose membership consists wholly or mainly of persons engaged in the production or supply of goods or in the supply of services or of persons employed by or representing persons so engaged and whose objects or activities include the promotion of the interests of persons so engaged.

Annual and other reports of Director.

125.—(1) The Director shall, as soon as practicable after the end of the year 1974 and of each subsequent calendar year, make to the Secretary of State a report on his activities, and the activities of the Advisory Committee and of the Commission, during that year.

(2) Every such report shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's duties under any enactment (including any enactment contained in this Act, other than this section).

(3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) of this section before each House of Parliament, and shall arrange for every such report to be published in such manner as he may consider appropriate.

(4) The Director may also prepare such other reports as appear to him to be expedient with respect to such matters as are mentioned in subsection (2) of this section, and may arrange for any such report to be published in such manner as he may consider appropriate.

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(5) In making any report under this Act the Director shall have regard to the need for excluding, so far as that is practicable, any such matter as is specified in paragraph (*a*) or paragraph (*b*) of section 124(2) of this Act.

(6) For the purposes of this section any period between the commencement of this Act and the end of the year 1973 shall be treated as included in the year 1974.

Special provisions relating to patents.
1949 c. 87.

126. The following subsections shall be substituted for subsections (3) and (4) of section 40 of the Patents Act 1949 (which confer certain powers on the comptroller where a report of the Commission relates to patented articles or processes):—

"(3) Where, on a reference under section 50 or section 51 of the Fair Trading Act 1973, a report of the Monopolies and Mergers Commission, as laid before Parliament, contains conclusions to the effect—

(*a*) that a monopoly situation (within the meaning of that Act) exists in relation to a description of goods which consists of or includes patented articles, or consists of or includes articles to which a patented process has been applied, or that such a situation exists in relation to a description of services in which a patented process is used, and

(*b*) that facts found by the Commission in pursuance of their investigations under section 49 of that Act operate, or may be expected to operate, against the public interest,

the appropriate Minister or Ministers, subject to subsection (3B) of this section, may apply to the comptroller for an order under subsection (4) of this section in respect of the patent.

(3A) Where, on a reference under section 64 or section 75 of the Fair Trading Act 1973, a report of the Monopolies and Mergers Commission, as laid before Parliament, contains conclusions to the effect—

(*a*) that a merger situation qualifying for investigation has been created;

(*b*) that one of the elements which constitute the creation of that situation is that the condition specified in subsection (2) or in subsection (3) of section 64 of that Act prevails (or does so to a greater extent) in respect of a description of goods which consists of or includes patented articles, or consists of or includes articles to which a patented

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process has been applied, or in respect of a description of services in which a patented process is used; and

(c) that the creation of that situation, or particular elements in or consequences of it specified in the report, operate, or may be expected to operate, against the public interest,

the Secretary of State, subject to the next following subsection, may apply to the comptroller for an order under subsection (5) of this section in respect of the patent.

(3B) Before making an application under subsection (3) or subsection (3A) of this section, the appropriate Minister or Ministers shall publish, in such manner as he or they think appropriate, a notice describing the nature of the proposed application, and shall consider any representations which, within the period of thirty days from the date of publication of the notice, may be made to him or them by persons whose interests appear to the appropriate Minister or Ministers to be likely to be affected by the proposed application.

(4) If, on an application under subsection (3) of this section, it appears to the comptroller that the facts specified in the report of the Monopolies and Mergers Commission as being those which, in the opinion of the Commission, operate or may be expected to operate against the public interest include—

(a) any conditions in a licence or licences granted by the patentee under the patent restricting the use of the invention by the licensee or the right of the patentee to grant other licences under the patent, or

(b) a refusal by the patentee to grant licences under the patent on reasonable terms,

the comptroller may by order cancel or modify any such condition or may, if he thinks fit, instead of making such an order or in addition to making such an order, order the patent to be endorsed with the words 'licences of right'.

(5) If on an application under subsection (3A) of this section it appears to the comptroller that the particular matters indicated in the report of the Monopolies and Mergers Commission as being those which, in the opinion of the Commission, operate or may be expected to operate against the public interest (whether those matters are so indicated in pursuance of a requirement imposed under section 69(4) or section 75(3) of the Fair Trading Act 1973 or otherwise) include any such condition or refusal as is mentioned in paragraph (a) or paragraph (b) of subsection (4) of this section, the comptroller may by order cancel or modify any

such condition or may, if he thinks fit, instead of making such an order or in addition to making such an order, order the patent to be endorsed with the words 'licences of right'. PART XII

(6) In this section 'the appropriate Minister or Ministers', in relation to a report of the Monopolies and Mergers Commission, means the Minister or Ministers to whom the report is made."

Additional power to make orders under Agricultural Marketing Act 1958.
1958 c. 47.

127. The following section shall be inserted in the Agricultural Marketing Act 1958 after section 19:—

"19A.—(1) The provisions of this section shall have effect where a report made by the Monopolies and Mergers Commission under section 54 of the Fair Trading Act 1973, as laid before Parliament, contains conclusions to the effect—

(a) that certain matters indicated in the report operate, or may be expected to operate, against the public interest, and

(b) that those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme.

(2) In the circumstances mentioned in subsection (1) of this section, the Minister shall have the like power to make orders under section 19 of this Act as if those conclusions of the Monopolies and Mergers Commission—

(a) had been to the effect that the provision of the scheme in question, or the act or omission of the board to which those conclusions relate, were contrary to the interests of consumers of the regulated product, and

(b) had been contained in a report of a committee of investigation."

Order superseded by declaration of Restrictive Practices Court.

128. Where an application is made to the Restrictive Practices Court under subsection (2) of section 30 of the Act of 1956 (which in certain circumstances enables an application to be made to that Court to declare whether proposed restrictions are contrary to the public interest) and—

(a) on that application the Court makes a declaration under that subsection in relation to a restriction proposed to be accepted under an agreement, and

(b) by virtue of an order under section 56 of this Act which is for the time being in force, the making or carrying out of an agreement under which that restriction was accepted would be unlawful,

the order under section 56 of this Act shall cease to have effect in so far as it renders unlawful the making or carrying out of an agreement under which that restriction is accepted.

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Time-limit for prosecutions.

129.—(1) No prosecution for an offence under this Act shall be commenced after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

1952 c. 55.

(2) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952, a magistrates' court may try an information for an offence under this Act if the information was laid within twelve months from the commission of the offence.

1954 c. 48.

(3) Notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954, summary proceedings in Scotland for an offence under this Act may be commenced within twelve months from the commission of the offence, and subsection (2) of the said section 23 shall apply for the purposes of this subsection as it applies for the purposes of that section.

(4) In the application of this section to Northern Ireland, for the references in subsection (2) to section 104 of the Magistrates' Courts Act 1952 and to the trial and laying of an information there shall be substituted respectively references to section 34 of the Magistrates' Courts Act (Northern Ireland) 1964 and to the hearing and determination and making of a complaint. 1964 c. 21. (N.I.).

Notice to Director of intended prosecution.
1968 c. 29.

130.—(1) Where a local weights and measures authority in England or Wales proposes to institute proceedings for an offence under section 23 of this Act, or for an offence under the Trade Descriptions Act 1968, other than an offence under section 28(5) or section 29 of that Act, it shall, as between the authority and the Director, be the duty of the authority to give to the Director notice of the intended proceedings, together with a summary of the facts on which the charges are to be founded, and to postpone institution of the proceedings until either—

(a) twenty-eight days have elapsed since the giving of that notice, or

(b) the Director has notified the authority that he has received the notice and the summary of the facts.

(2) In relation to offences under the Trade Descriptions Act 1968, the preceding subsection shall have effect subject to the transitional provisions having effect by virtue of section 139 of this Act.

Notification of convictions and judgments to Director.

131.—(1) Where in any criminal proceedings a person is convicted of an offence by or before a court in the United Kingdom, or a judgment is given against a person in civil proceedings in any such court, and it appears to the court—

(a) having regard to the functions of the Director under Part III of this Act, that it would be expedient for the conviction or judgment to be brought to his attention, and

(b) that it may not be brought to his attention unless arrangements for the purpose are made by the court, PART XII

the court may make arrangements for that purpose notwithstanding that the proceedings have been finally disposed of by the court.

(2) In this section "judgment" includes any order or decree, and any reference to the giving of a judgment shall be construed accordingly.

Offences by bodies corporate.

132.—(1) Where an offence under section 23, section 46, section 85(6) or Part XI of this Act, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) of this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

General restrictions on disclosure of information.

133.—(1) Subject to subsections (2) to (4) of this section, no information with respect to any particular business which has been obtained under or by virtue of the provisions (other than Part II) of this Act or under or by virtue of the Act of 1956 or the Act of 1968 shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business.

(2) The preceding subsection does not apply to any disclosure of information which is made—

(a) for the purpose of facilitating the performance of any functions of the Director, the Commission, the Secretary of State or any other Minister under this Act, the Act of 1956 or the Act of 1968, or

(b) in pursuance of a Community obligation within the meaning of the European Communities Act 1972. 1972 c. 68.

(3) Subsection (1) of this section does not apply to any disclosure of information which is made for the purposes of any proceedings before the Restrictive Practices Court or of any other legal proceedings, whether civil or criminal, under this Act, the Act of 1956 or the Act of 1968.

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(a) includes the undertaking and performance for gain or reward of engagements (whether professional or other) for any matter other than the supply of goods, and

(b) includes both the rendering of services to order and the provision of services by making them available to potential users;

and any reference in those provisions to services supplied or to be supplied, or to services provided or to be provided, shall be construed accordingly.

(4) For the purposes of this Act, except Part X, " services " includes electricity.

1948 c. 38. (5) For the purposes of the provisions of this Act other than Part X, any two bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of section 154 of the Companies Act 1948) or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate; and in those provisions " interconnected bodies corporate " shall be construed accordingly, and " group of interconnected bodies corporate " means a group consisting of two or more bodies corporate all of whom are interconnected with each other.

(6) For the purposes of the application of any provision of this Act in relation to goods or services of a particular description or to which a particular practice applies, " consumers " means persons who are consumers (as defined by subsection (2) of this section) in relation to goods or services of that description or in relation to goods or services to which that practice applies.

1971 c. 72. (7) For the purposes of the application of this Act to Northern Ireland, the definition of " worker " in subsection (2) of this section shall apply as if the Industrial Relations Act 1971 extended to Northern Ireland but, in section 167(2)(a) of that Act, references to general medical services, pharmaceutical services, general dental services or general ophthalmic services provided under the enactments mentioned in that subsection were references to the corresponding services provided in Northern Ireland under the corresponding enactments there in force.

(8) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

Supplementary interpretation provisions.

138.—(1) This section applies to the following provisions of this Act, that is to say, section 2(4), Parts II and III, section 137(6), and the definition of " consumer " contained in section 137(2).

(2) For the purposes of any provisions to which this section applies it is immaterial whether any person supplying goods or services has a place of business in the United Kingdom or not.

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(3) For the purposes of any provisions to which this section applies any goods or services supplied wholly or partly outside the United Kingdom, if they are supplied in accordance with arrangements made in the United Kingdom, whether made orally or by one or more documents delivered in the United Kingdom or by correspondence posted from and to addresses in the United Kingdom, shall be treated as goods supplied to, or services supplied for, persons in the United Kingdom.

(4) In relation to the supply of goods under a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, the person conducting any antecedent negotiations, as well as the owner or seller, shall for the purposes of any provisions to which this section applies be treated as a person supplying or seeking to supply the goods.

(5) Subsection (4) of this section shall be construed—

(a) in relation to England and Wales, in accordance with subsections (1), (3), (4) and (5) of section 58 of the Hire-Purchase Act 1965; 1965 c. 66.

(b) in relation to Scotland, in accordance with subsections (1), (3), (4) and (5) of section 54 of the Hire-Purchase (Scotland) Act 1965; and 1965 c. 67.

(c) in relation to Northern Ireland, in accordance with subsections (1), (3), (4) and (5) of section 65 of the Hire-Purchase Act (Northern Ireland) 1966. 1966 c. 42 (N.I.).

(6) In any provisions to which this section applies—

(a) any reference to a person to or for whom goods or services are supplied shall be construed as including a reference to any guarantor of such a person, and

(b) any reference to the terms or conditions on or subject to which goods or services are supplied shall be construed as including a reference to the terms or conditions on or subject to which any person undertakes to act as such a guarantor;

and in this subsection " guarantor ", in relation to a person to or for whom goods or services are supplied, includes a person who undertakes to indemnify the supplier of the goods or services against any loss which he may incur in respect of the supply of the goods or services to or for that person.

(7) For the purposes of any provisions to which this section applies goods or services supplied by a person carrying on a business shall be taken to be supplied in the course of that business if payment for the supply of the goods or services is made or (whether under a contract or by virtue of an enactment or otherwise) is required to be made.

PART XII

Amendments, repeals and transitional provisions.

139.—(1) Subject to the transitional provisions and savings contained in Schedule 11 to this Act—

(a) the enactments specified in Schedule 12 to this Act shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential upon the preceding provisions of this Act), and

(b) the enactments specified in Schedule 13 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2) The provisions of Schedule 11 to this Act shall have effect for the purposes of this Act.

Short title, citation, commencement and extent.

140.—(1) This Act may be cited as the Fair Trading Act 1973.

1956 c. 68.
1968 c. 66.

(2) The Restrictive Trade Practices Act 1956, the Restrictive Trade Practices Act 1968, Parts IX and X of this Act, Schedules 4 and 10 to this Act and so much of Schedules 12 and 13 to this Act as relates to those Acts may be cited together as the Restrictive Trade Practices Acts 1956 to 1973.

(3) This Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint; and different dates may be so appointed for, or for different purposes of, any one or more of the provisions of this Act (including, in the case of section 139 of this Act, the amendment or repeal of different enactments specified in Schedule 12 or Schedule 13 to this Act or of different provisions of any enactment so specified).

(4) Where any provision of this Act, other than a provision contained in Schedule 11, refers to the commencement of this Act, it shall be construed as referring to the day appointed under this section for the coming into operation of that provision.

(5) This Act extends to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 1.

DIRECTOR GENERAL OF FAIR TRADING

1. There shall be paid to the Director such remuneration, and such travelling and other allowances, as the Secretary of State with the approval of the Minister for the Civil Service may determine.

2. In the case of any such holder of the office of the Director as may be determined by the Secretary of State with the approval of the Minister for the Civil Service, there shall be paid such pension, allowance or gratuity to or in respect of him on his retirement or death, or such contributions or payments towards provision for such a pension, allowance or gratuity, as may be so determined.

3. If, when any person ceases to hold office as the Director, it appears to the Secretary of State with the approval of the Minister for the Civil Service that there are special circumstances which make it right that he should receive compensation, there may be paid to him a sum by way of compensation of such amount as may be so determined.

4. In the House of Commons Disqualification Act 1957, in Part III of Schedule 1 (other disqualifying offices) there shall (at the appropriate place in alphabetical order) be inserted the following entry:— 1957 c. 20.

" Director General of Fair Trading ";

and the like amendment shall be made in the Part substituted for the said Part III by Schedule 3 to that Act in its application to the Senate and House of Commons of Northern Ireland.

5. The Director shall have an official seal for the authentication of documents required for the purposes of his functions.

6. The Documentary Evidence Act 1868 shall have effect as if the Director were included in the first column of the Schedule to that Act, as if the Director and any person authorised to act on behalf of the Director were mentioned in the second column of that Schedule, and as if the regulations referred to in that Act included any document issued by the Director or by any such person. 1868 c. 37.

7. Anything authorised or required by or under this Act or any other enactment to be done by the Director, other than the making of a statutory instrument, may be done by any member of the staff of the Director who is authorised generally or specially in that behalf in writing by the Director.

SCHEDULE 2

Section 3.

CONSUMER PROTECTION ADVISORY COMMITTEE

Status of Committee

1. Members of the Advisory Committee in their capacity as such shall not be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown.

Sch. 2

Tenure of office of members

2.—(1) Subject to the following provisions of this paragraph, a member of the Advisory Committee shall hold and vacate office as such in accordance with the terms of his appointment.

(2) A person shall not be appointed to the Advisory Committee for a term exceeding three years; but previous membership shall not affect eligibilty for re-appointment.

(3) A member of the Advisory Committee may at any time resign his membership by notice in writing addressed to the Secretary of State.

(4) The Secretary of State may remove a member of the Advisory Committee on the ground of incapacity or misbehaviour.

Tenure of office of chairman and deputy chairman

3.—(1) The chairman or deputy chairman of the Advisory Committee may at any time resign his office as such by notice in writing addressed to the Secretary of State.

(2) The Secretary of State may remove a chairman or deputy chairman of the Advisory Committee on the ground of incapacity or misbehaviour.

Remuneration and allowances

4. There shall be paid to the members of the Advisory Committee such remuneration, and such travelling and other allowances, as in the case of any of those members the Secretary of State may determine with the approval of the Minister for the Civil Service.

General provisions as to sums payable on retirement or death of members

5. As regards any member of the Advisory Committee in whose case the Secretary of State may so determine with the approval of the Minister for the Civil Service, the Secretary of State shall pay such pension, allowance or gratuity to or in respect of him, or make such payments towards the provision of such a pension, allowance or gratuity, as may be so determined.

6. If, when any person ceases to be a member of the Advisory Committee, it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may pay him a sum by way of compensation of such amount as he may determine with the approval of the Minister for the Civil Service.

Procedure of Committee

7. In the case of an equality of votes on any question at a meeting of the Advisory Committee the chairman shall have a second or casting vote.

8. At any time when the chairman is absent or otherwise incapable of acting, or there is a vacancy in the office of chairman, the deputy chairman may perform any of the functions of the chairman.

9. At any time when the chairman and deputy chairman of the Advisory Committee are absent or otherwise incapable of acting or there is a vacancy in the office of chairman and of deputy chairman, such member of the Advisory Committee as the Secretary of State may direct, or in default of any such direction such member of the Advisory Committee as the Advisory Committee may agree, may perform any of the functions of the chairman.

Sch. 2

SCHEDULE 3

Section 4.

THE MONOPOLIES AND MERGERS COMMISSION

PART I

STATUS, TERMS OF OFFICE, AND STAFF

Status of Commission

1. Members of the Commission in their capacity as such shall not be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown.

Tenure of office of regular members

2.—(1) Subject to the following provisions of this paragraph, a regular member of the Commission shall hold and vacate office as such in accordance with the terms of his appointment.

(2) A person shall not be appointed to be a regular member of the Commission for a term exceeding five years; but previous membership shall not affect eligibility for re-appointment.

(3) A regular member of the Commission may at any time resign his membership by notice in writing addressed to the Secretary of State.

(4) The Secretary of State may remove a regular member of the Commission on the ground of incapacity or misbehaviour.

Appointment and tenure of office of chairman and deputy chairmen

3.—(1) There shall be a chairman of the Commission appointed from among the regular members by the Secretary of State; and the Secretary of State may appoint not more than three other regular members to be deputy chairmen.

(2) The chairman or a deputy chairman may at any time resign his office as such by notice in writing addressed to the Secretary of State.

(3) The Secretary of State may remove a chairman or deputy chairman of the Commission on the ground of incapacity or misbehaviour.

(4) If the chairman or a deputy chairman of the Commission ceases to be a regular member of the Commission, he shall also cease to be chairman or, as the case may be, a deputy chairman.

Staff

4. The Commission shall have a secretary, who shall be a person appointed by the Commission with the approval of the Secretary of State.

5. The Commission may appoint such other staff as the Commission think fit, subject to the approval of the Secretary of State and of the Minister for the Civil Service as to numbers and as to terms and conditions of service.

Sch. 3

Remuneration and allowances

6. There shall be paid to the members of the Commission such remuneration, and such travelling and other allowances, as in the case of any of those members the Secretary of State may determine with the approval of the Minister for the Civil Service.

7. There shall be paid to the staff of the Commission such remuneration, and such travelling and other allowances, as the Commission may determine with the approval of the Secretary of State and of the Minister for the Civil Service.

General provisions as to sums payable on retirement or death of members

8. As regards any member of the Commission in whose case the Secretary of State may so determine with the approval of the Minister for the Civil Service, the Secretary of State shall pay such pension, allowance or gratuity to or in respect of him, or make such payments towards the provision of such a pension, allowance or gratuity, as may be so determined.

9. If, when any person ceases to be a member of the Commission, it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may pay him a sum by way of compensation of such amount as he may determine with the approval of the Minister for the Civil Service.

PART II

PERFORMANCE OF FUNCTIONS OF COMMISSION

10.—(1) If the chairman of the Commission so directs—

(*a*) the functions of the Commission in relation to any investigation under this Act, in so far as those functions have not been performed before the direction is given, or

(*b*) the functions of the Commission in relation to the making of a report required of them under Part VI of this Act,

shall be performed through a group of not less than five regular members of the Commission selected by the chairman of the Commission.

(2) In the following provisions of this Part of this Schedule "group" means a group of members of the Commission selected under this paragraph, and "the chairman" (except where the reference is expressly to the chairman of a group) means the chairman of the Commission.

11. Where, after a direction under paragraph 10 of this Schedule has been given with respect to the investigations on a monopoly reference or on a merger reference, the reference is varied under section 52 of this Act or, in the case of a merger reference, under section 71 of this Act, the functions of the Commission in relation to those investigations shall be performed either through the group specified in that direction, or through another group, or by the Commission as a whole, as the chairman may direct.

12. The chairman may appoint one of the members of a group to act as chairman of the group.

Sch. 3

13.—(1) Where during the proceedings of a group—

(*a*) a member of the group ceases to be a member of the Commission, or

(*b*) the chairman is satisfied that a member of the group will be unable for a substantial period to perform his duties as a member of the group,

the chairman may appoint any member of the Commission to be a member of the group in his place.

(2) The chairman may also at any time appoint any member of the Commission to be an additional member of a group, whether the person so appointed was or was not a member of the Commission at the time when the group was originally selected.

14.—(1) At the invitation of the chairman of a group, any member of the Commission who is not a member of the group may attend meetings or otherwise take part in the proceedings of the group, except that such a member shall not be entitled—

(*a*) to vote at any such meeting or in any such proceedings, or

(*b*) to have a statement of his dissent from a conclusion of the group included in a report made by them.

(2) Nothing in the preceding sub-paragraph shall be taken to prevent a group or a member of a group from consulting any member of the Commission with respect to any matter or question with which the group is concerned.

15. In determining their procedure, and in exercising any powers conferred on the Commission by this Act, a group shall comply with any special or general directions which may be given to them by the Commission, as well as with any directions given to the Commission by the Secretary of State.

16.—(1) Subject to the next following sub-paragraph, anything done by or in relation to a group in, or in connection with, the performance of functions required by a direction under paragraph 10 or paragraph 11 of this Schedule to be performed by the group shall have the same effect as if it had been done by or in relation to the Commission.

(2) For the purposes of sections 56 and 73 of this Act, of section 40 of the Patents Act 1949 (which confers on the comptroller certain powers which are exercisable with reference to a report of the Commission) and of section 19A of the Agricultural Marketing Act 1958, a conclusion contained in a report of the Commission shall be disregarded if the report is made through a group and the conclusion is not that of at least two-thirds of the members of the group.

1949 c. 87.
1958 c. 47.

17. The quorum necessary—

(*a*) for any meeting of the Commission held for the final settling of a report of the Commission shall be not less than two-thirds of the regular members of the Commission, and

(*b*) for any other meeting of the Commission shall be such as the Commission may from time to time determine.

Part III

Goods Partly Excluded in Relation to Northern Ireland Only

Description of goods	*Form of supply excluded*
14. Live pigs.	Supply for slaughter.
15. Fresh uncured carcases or parts of carcases of pigs.	Supply otherwise than by way of retail sale.

Sections 56, 73, 74, 77, 89 and 91.

SCHEDULE 8

Powers Exercisable by Orders Under Sections 56 and 73

Part I

Powers Exercisable in all Cases

1. Subject to paragraph 3 of this Schedule, an order under section 56 or section 73 of this Act (in this Schedule referred to as an "order") may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to make or to carry out any such agreement as may be specified or described in the order.

2. Subject to the next following paragraph, an order may require any party to any such agreement as may be specified or described in the order to terminate the agreement within such time as may be so specified, either wholly or to such extent as may be so specified.

3.—(1) An order shall not by virtue of paragraph 1 of this Schedule declare it to be unlawful to make any agreement in so far as, if made, it would be an agreement to which Part I of the Act of 1956 would apply.

(2) An order shall not by virtue of paragraph 1 or paragraph 2 of this Schedule declare it to be unlawful to carry out, or require any person to terminate, an agreement in so far as it is an agreement to which Part I of the Act of 1956 applies.

(3) An order shall not by virtue of either of those paragraphs declare it to be unlawful to make or to carry out, or require any person to terminate, an agreement in so far as, if made, it would relate, or (as the case may be) in so far as it relates, to the terms and conditions of employment of any workers, or to the physical conditions in which any workers are required to work.

971 c. 72.

(4) In this paragraph "terms and conditions of employment" has the meaning assigned to it by section 167(1) of the Industrial Relations Act 1971.

4. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to withhold or to agree to withhold or to threaten to withhold, or to procure others to withhold or to agree to withhold or threaten to withhold, from any such persons as may be specified or described in the order, any supplies or services so specified or described or any orders for such supplies or services (whether the withholding is absolute or is to be effectual only in particular circumstances).

5. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to require, as a condition of the supplying of goods or services to any person,—

(a) the buying of any goods, or

(b) the making of any payment in respect of services other than the goods or services supplied, or

(c) the doing of any other such matter as may be specified or described in the order.

6. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order,—

(a) to discriminate in any manner specified or described in the order between any persons in the prices charged for goods or services so specified or described, or

(b) to do anything so specified or described which appears to the appropriate Minister to amount to such discrimination,

or to procure others to do any of the things mentioned in sub-paragraph (a) or sub-paragraph (b) of this paragraph.

7. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order,—

(a) to give or agree to give in other ways any such preference in respect of the supply of goods or services, or the giving of orders for goods or services, as may be specified or described in the order, or

(b) to do anything so specified or described which appears to the appropriate Minister to amount to giving such preference,

or to procure others to do any of the things mentioned in sub-paragraph (a) or sub-paragraph (b) of this paragraph.

8. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to charge for goods or services supplied prices differing from those in any published list or notification, or to do anything specified or described in the order which appears to the appropriate Minister to amount to charging such prices.

9. An order may require a person supplying goods or services to publish a list of or otherwise notify prices, with or without such further information as may be specified or described in the order.

10.—(1) Subject to the following provisions of this paragraph, an order may, to such extent and in such circumstances as may be provided by or under the order, regulate the prices to be charged for any goods or services specified or described in the order.

Sch. 8

(2) An order shall not exercise the power conferred by the preceding sub-paragraph in respect of goods or services of any description unless the matters specified in the relevant report as being those which in the opinion of the Commission operate, or may be expected to operate, against the public interest relate, or include matters relating, to the prices charged for goods or services of that description.

(3) In this paragraph "the relevant report", in relation to an order, means the report of the Commission in consequence of which the order is made, in the form in which that report is laid before Parliament.

11. An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, for any person, by publication or otherwise, to notify, to persons supplying goods or services, prices recommended or suggested as appropriate to be charged by those persons for those goods or services.

12.—(1) An order may prohibit or restrict the acquisition by any person of the whole or part of the undertaking or assets of another person's business, or the doing of anything which will or may have a result to which this paragraph applies, or may require that, if such an acquisition is made or anything is done which has such a result, the persons concerned or any of them shall thereafter observe any prohibitions or restrictions imposed by or under the order.

(2) This paragraph applies to any result which consists in two or more bodies corporate becoming interconnected bodies corporate.

(3) Where an order is made in consequence of a report of the Commission under section 72 of this Act, or is made under section 74 of this Act, this paragraph also applies to any result (other than that specified in sub-paragraph (2) of this paragraph) which, in accordance with section 65 of this Act, consists in two or more enterprises ceasing to be distinct enterprises.

13. In this Part of this Schedule "the appropriate Minister", in relation to an order, means the Minister by whom the order is made.

PART II

POWERS EXERCISABLE EXCEPT IN CASES FALLING WITHIN SECTION 56(6)

14. An order may provide for the division of any business by the sale of any part of the undertaking or assets or otherwise (for which purpose all the activities carried on by way of business by any one person or by any two or more interconnected bodies corporate may be treated as a single business), or for the division of any group of interconnected bodies corporate, and for all such matters as may be necessary to effect or take account of the division, including—

(a) the transfer or vesting of property, rights, liabilities or obligations;

(b) the adjustment of contracts, whether by discharge or reduction of any liability or obligation or otherwise;

(c) the creation, allotment, surrender or cancellation of any shares, stock or securities;

(d) the formation or winding up of a company or other association, corporate or unincorporate, or the amendment of the memorandum and articles or other instruments regulating any company or association;

(e) the extent to which, and the circumstances in which, provisions of the order affecting a company or association in its share capital, constitution or other matters may be altered by the company or association, and the registration under any enactment of the order by companies or associations so affected;

(f) the continuation, with any necessary change of parties, of any legal proceedings.

15. In relation to an order under section 73 of this Act, the reference in paragraph 14 of this Schedule to the division of a business as mentioned in that paragraph shall be construed as including a reference to the separation, by the sale of any part of any undertaking or assets concerned or other means, of enterprises which are under common control otherwise than by reason of their being enterprises of interconnected bodies corporate.

SCHEDULE 9

Section 91.

PROCEDURE PRELIMINARY TO LAYING DRAFT OF ORDER TO WHICH SECTION 91(1) APPLIES

1. The provisions of this Schedule shall have effect where the Secretary of State proposes to lay before Parliament a draft of any such order as is mentioned in section 91(1) of this Act.

2. The Secretary of State shall cause notice of his intention to lay a draft of the order before Parliament to be published in the London Gazette, the Edinburgh Gazette and the Belfast Gazette and in two or more daily newspapers (other than local newspapers), and shall not lay a draft of the order until the end of the period of forty-two days beginning with the day on which the publication of the notice in accordance with this paragraph is completed.

3. A notice under this Schedule shall—

(a) state that it is proposed to lay a draft of the order before Parliament;

(b) indicate the nature of the provisions to be embodied in the order;

(c) name a place where a copy of the draft will be available to be seen at all reasonable times; and

(d) state that any person whose interests are likely to be affected by the order, and who is desirous of making representations in respect of it, should do so in writing (stating his interest

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18. The quorum necessary for a meeting of a group shall be such as the group may from time to time determine.

19. In the case of an equality of votes on any question at a meeting of the Commission or of a group the chairman, or the chairman of the group, as the case may be, shall have a second or casting vote.

20. At any time when the chairman is absent or otherwise incapable of acting, or there is a vacancy in the office of chairman,—

(*a*) such one of the deputy chairmen of the Commission as the Secretary of State may direct, or in default of any such direction such one of them as they may agree, or

(*b*) if there is only one deputy chairman of the Commission the deputy chairman,

may perform any of the functions of the chairman.

21. At any time when every person who is chairman or deputy chairman of the Commission is absent or otherwise incapable of acting, or there is no such person, such member of the Commission as the Secretary of State may direct, or in default of any such direction such member of the Commission as the Commission may agree, may perform any of the functions of the chairman.

22. For the purposes of a newspaper merger reference the Secretary of State may appoint three, four, or five additional members of the Commission, from a panel maintained by the Secretary of State for the purpose of making such appointments ; and if any functions of the Commission in relation to that reference are performed through a group, any additional members appointed under this paragraph for the purposes of the reference shall be members of the group in addition to the members selected by the chairman.

SCHEDULE 4

Sections 14 and 109.

Services Excluded from Sections 14 and 109

1. Legal services (that is to say, the services of barristers, advocates or solicitors in their capacity as such).

2. Medical services (that is to say, the provision of medical or surgical advice or attendance and the performance of surgical operations).

1957 c. 28. 3. Dental services (that is to say, any services falling within the practice of dentistry within the meaning of the Dentists Act 1957).

4. Ophthalmic services (that is to say, the testing of sight).

1966 c. 36. 5. Veterinary services (that is to say, any services which constitute veterinary surgery within the meaning of the Veterinary Surgeons Act 1966).

1957 c. 15.
1951 c. 55.
1970 c. 11 (N.I.).
6. Nursing services (that is to say, any services which constitute nursing within the meaning of the Nurses Act 1957, the Nurses (Scotland) Act 1951 or the Nurses and Midwives Act (Northern Ireland) 1970).

7. The services of midwives, physiotherapists or chiropodists in their capacity as such.

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8. The services of architects in their capacity as such.

9. Accounting and auditing services (that is to say, the making or preparation of accounts or accounting records and the examination, verification and auditing of financial statements).

10. The services of patent agents (within the meaning of the Patents Act 1949), in their capacity as such. 1949 c. 87.

11. The services of parliamentary agents entered in the register in either House of Parliament as agents entitled to practise both in promoting and in opposing Bills, in their capacity as such parliamentary agents.

12. The services of surveyors (that is to say, of surveyors of land, of quantity surveyors, of surveyors of buildings or other structures and of surveyors of ships) in their capacity as such surveyors.

13. The services of professional engineers or technologists (that is to say, of persons practising or employed as consultants in the field of—

(*a*) civil engineering ;

(*b*) mechanical, aeronautical, marine, electrical or electronic engineering ;

(*c*) mining, quarrying, soil analysis or other forms of minerology or geology ;

(*d*) agronomy, forestry, livestock rearing or ecology ;

(*e*) metallurgy, chemistry, biochemistry or physics ; or

(*f*) any other form of engineering or technology analogous to those mentioned in the preceding sub-paragraphs),

in their capacity as such engineers or technologists.

14. Services consisting of the provision—

(*a*) of primary, secondary or further education within the meaning of the Education Act 1944, the Education (Scotland) Acts 1939 to 1971 or the Education and Libraries (Northern Ireland) Order 1972, or 1944 c. 31.

(*b*) of university or other higher education not falling within the preceding sub-paragraph.

15. The services of ministers of religion in their capacity as such ministers.

SCHEDULE 5

Sections 16, 50 and 51.

Goods and Services Referred to in Section 16

Part I

General Restriction

1. Gas supplied through pipes, otherwise than for industrial purposes as mentioned in section 9(4) of the Continental Shelf Act 1964. 1964 c. 29.

2. Natural gas (that is to say, gas derived from natural strata) in so far as it does not fall within the preceding paragraph.

3. Electricity.

4. The carriage of passengers by road or rail.

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5. The carriage of goods by rail.

6. The services of conveying, receiving, collecting, despatching and delivering letters.

7. The running of any system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of any of the matters specified in paragraphs (*a*) to (*d*) of section 24(1) of the Post Office Act 1969. 1969 c. 48.

Part II

Limited Restriction

Description of goods or services	*Form of supply*
8.—(1) Apparatus or equipment used, or constructed or adapted for use, for the purposes of or in association with any such system as is mentioned in paragraph 7 of this Schedule. (2) The installation or maintenance of any such apparatus or equipment.	Supply to persons who are subscribers to a service provided by the Post Office which constitutes or forms part of any such system, in their capacity as subscribers to such a service.

Section 19.

SCHEDULE 6

Matters Falling Within Scope of Proposals Under Section 17

1. Prohibition of the specified consumer trade practice either generally or in relation to specified consumer transactions.

2. Prohibition of specified consumer transactions unless carried out at specified times or at a place of a specified description.

3. Prohibition of the inclusion in specified consumer transactions of terms or conditions purporting to exclude or limit the liability of a party to such a transaction in respect of specified matters.

4. A requirement that contracts relating to specified consumer transactions shall include specified terms or conditions.

5. A requirement that contracts or other documents relating to specified consumer transactions shall comply with specified provisions as to lettering (whether as to size, type, colouring or otherwise).

6. A requirement that specified information shall be given to parties to specified consumer transactions.

SCHEDULE 7

Sections 50, and 51.

Goods and Services (in addition to those in Schedule 5) Wholly or Partly Excluded from Section 50

Part I

Goods and Services Wholly Excluded

1. Raw cane or beet sugar.
2. Sugar beet.
3. Hops.
4. Water.
5. Port facilities (as defined by section 92(1) of the Transport Act 1962). 1962 c. 46.
6. Air navigation services (as defined by section 64(1) of the Civil Aviation Act 1971). 1971 c. 75.
7. The carriage of passengers or goods by air.
8. The provision by programme contractors of programmes for transmission (whether by way of television or of sound broadcasting) by the Independent Broadcasting Authority.

Part II

Goods and Services Partly Excluded

Description of goods or services	*Form of supply excluded*
9. Liquid cows' milk.	Supply otherwise than in containers in which milk is put up for purposes of retail sale.
10. Refined sugar.	Supply otherwise than by way of retail sale.
11. Fleece wool.	Supply under a scheme for the time being in force under the Agricultural Marketing Act 1958. 1958 c. 47.
12. Potatoes to which no process of manufacture (other than dressing or dyeing) has been applied.	Supply which is neither— (*a*) supply by way of retail sale, other than any such supply by the producer of the goods, nor (*b*) supply to a person purchasing the goods for the purpose of selling them by retail.
13. Services supplied at aerodromes (as defined by section 64(1) of the Civil Aviation Act 1971) in connection with the landing, housing, parking or taking off of aircraft or the accommodation of passengers or cargo and their transfer to and from aircraft.	Supply at aerodromes which are either— (*a*) aerodromes owned or managed by the Civil Aviation Authority, or 1971 c. 75. (*b*) aerodromes in respect of which a licence for public use (as defined by any Order in Council for the time being in force under section 8 of the Civil Aviation Act 1949) is for the time being in force. 1949 c. 67.

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(4) Nothing in subsection (1) of this section shall be construed—

(*a*) as limiting the matters which may be included in, or made public as part of, a report of the Advisory Committee or of the Commission ;

(*b*) as limiting the particulars which may be entered or filed in, or made public as part of, the register under Part I of the Act of 1956 ; or

(*c*) as applying to any information which has been made public as part of such a report or as part of that register.

(5) Any person who discloses any information in contravention of this section shall be guilty of an offence and shall be liable—

(*a*) on summary conviction, to a fine not exceeding £400 ;

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) In this section references to this Act shall be construed as including references to any enactment repealed by this Act.

Provisions as to orders.

134.—(1) Any statutory instrument whereby any order is made under any of the preceding provisions of this Act, other than a provision which requires a draft of the order to be laid before Parliament before making the order, or whereby any regulations are made under this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Any power conferred by any provision of this Act to make an order by statutory instrument shall include power to revoke or vary the order by a subsequent order made under that provision.

Financial provisions.

135.—(1) The Secretary of State shall pay all remuneration, allowances or other sums payable under this Act to or in respect of persons who are or have been members of the Advisory Committee or the Commission, and shall defray—

(*a*) all expenses duly incurred by the Commission in the payment of remuneration or allowances payable under this Act to staff of the Commission, and

(*b*) to such amount as the Secretary of State with the approval of the Minister for the Civil Service may determine, all other expenses duly incurred by the Advisory Committee or the Commission.

(2) There shall be defrayed out of moneys provided by Parliament—

(*a*) all expenses incurred by the Secretary of State in consequence of the provisions of this Act ;

PART XII

(*b*) any expenses incurred in consequence of those provisions by any other Minister of the Crown or government department, not being a Minister or department of the Government of Northern Ireland ;

(*c*) the remuneration of, and any travelling or other allowances payable under this Act to, the Director and any staff of the Director, any other sums payable under this Act to or in respect of the Director, and any expenses duly incurred by the Director or by any of his staff in consequence of the provisions of this Act ;

(*d*) any increase attributable to this Act in the sums payable out of moneys so provided under the Superannuation Act 1972. 1972 c. 11.

(3) The Secretary of State shall for each financial year pay into the Exchequer of Northern Ireland such sum as the Secretary of State and the Ministry of Commerce for Northern Ireland may agree to be appropriate, as representing the expenses incurred by that Ministry in enforcing the provisions of any order made under section 22 of this Act, in so far as any such order provides for matters with respect to which the Parliament of Northern Ireland does not have power to make laws.

Powers of Parliament of Northern Ireland.

136. The Parliament of Northern Ireland shall have the same power to pass Acts with respect to any matter as they would have had if this Act had not been passed ; and, in the event of any inconsistency between any Act of the Parliament of Northern Ireland passed after the passing of this Act and any provision of this Act or any order or other instrument having effect by virtue of this Act, the Act of the Parliament of Northern Ireland shall, in Northern Ireland, prevail.

General interpretation provisions.

137.—(1) In this Act—

" the Act of 1948 " means the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 ; 1948 c. 66.

" the Act of 1956 " means the Restrictive Trade Practices Act 1956 ; 1956 c. 68.

" the Act of 1964 " means the Resale Prices Act 1964 ; 1964 c. 58.

" the Act of 1965 " means the Monopolies and Mergers Act 1965 ; 1965 c. 50.

" the Act of 1968 " means the Restrictive Trade Practices Act 1968 ; 1968 c. 66.

" assignment ", in relation to Scotland, means assignation ;

" contract of employment " means a contract of service or of apprenticeship, whether it is express or implied, and (if it is express) whether it is oral or in writing ;

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PART XII

" scale " (where the reference is to the scale on which any services are, or are to be, made available, supplied or obtained) means scale measured in terms of money or money's worth or in any other manner.

(2) Except in so far as the context otherwise requires, in this Act, except in Part X, the following expressions have the meanings hereby assigned to them respectively, that is to say—

" the Advisory Committee " means the Consumer Protection Advisory Committee ;

" agreement " means any agreement or arrangement, in whatever way and in whatever form it is made, and whether it is, or is intended to be, legally enforceable or not ;

" business " includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge ;

" commercial activities in the United Kingdom " means any of the following, that is to say, the production and supply of goods in the United Kingdom, the supply of services in the United Kingdom and the export of goods from the United Kingdom ;

" the Commission " means the Monopolies and Mergers Commission ;

" complex monopoly situation " has the meaning assigned to it by section 11 of this Act ;

" consumer " (subject to subsection (6) of this section) means any person who is either—

(*a*) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them, or

(*b*) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them,

and who does not receive or seek to receive the goods or services in the course of a business carried on by him ;

" the Director " means the Director General of Fair Trading ;

" enactment " includes an enactment of the Parliament of Northern Ireland ;

" goods " includes buildings and other structures, and also includes ships, aircraft and hovercraft, but does not include electricity ;

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" group " (where the reference is to a group of persons fulfilling specified conditions, other than the condition of being interconnected bodies corporate) means any two or more persons fulfilling those conditions, whether apart from fulfilling them they would be regarded as constituting a group or not ;

" merger reference " has the meaning assigned to it by section 5(3) of this Act ;

" merger situation qualifying for investigation " has the meaning assigned to it by section 64(8) of this Act ;

" Minister " includes a government department but shall not by virtue of this provision be taken to include the establishment consisting of the Director and his staff, and, except where the contrary is expressly provided, does not include any Minister or department of the Government of Northern Ireland ;

" monopoly reference " and " monopoly situation " have the meanings assigned to them by section 5(3) of this Act ;

" newspaper merger reference " has the meaning assigned to it by section 59(3) of this Act ;

" practice " means any practice, whether adopted in pursuance of an agreement or otherwise ;

" price " includes any charge or fee, by whatever name called ;

" produce ", in relation to the production of minerals or other substances, includes getting them, and, in relation to the production of animals or fish, includes taking them ;

" supply ", in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person ;

" uncompetitive practices " means practices having the effect of preventing, restricting or distorting competition in connection with any commercial activities in the United Kingdom ;

" worker " (subject to subsection (7) of this section) has the meaning assigned to it by section 167 of the Industrial Relations Act 1971. 1971 c. 72.

(3) In the provisions of this Act other than Part X (and without prejudice to the construction of that Part in accordance with section 117 of this Act) " the supply of services " does not include the rendering of any services under a contract of employment but, with that exception,—

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and the grounds on which he wishes to make the representations) before the date on which the period mentioned in paragraph 2 of this Schedule is due to expire (specifying that date).

4. The Secretary of State shall consider any representation that is duly made with respect to the draft order and is not withdrawn, and, at any time after the date specified in the notice in accordance with sub-paragraph (*d*) of paragraph 3 of this Schedule, may lay the draft order either—

(*a*) in the form in which it was made available as stated in the notice in compliance with sub-paragraph (*c*) of that paragraph, or

(*b*) in that form subject to such modifications as appear to the Secretary of State to be necessary to ensure that the rights and interests of persons likely to be affected by the provisions of the order are so adjusted as to secure an equitable distribution of any burden imposed by, or any benefit accruing from, any provisions of the order.

Sections 116, 117.

SCHEDULE 10

MODIFICATIONS OF ACTS OF 1956 AND 1968 IN RELATION TO SERVICES

PART I

MODIFICATIONS OF ACT OF 1956

Section of Act — *Modification*

Section 10 ... In subsection (1)(*b*), for the words " any such restrictions as are described in subsection (1) of section six of this Act " there shall be substituted the words " restrictions, or provision for or in relation to the furnishing of information, in respect of matters specified in the relevant order for the purposes of section 107(1)(*b*) or section 108(1)(*b*) of the Act of 1973 ".

In subsection (7), for the words " this Part of this Act applies by virtue of subsection (6) of section six of this Act as if it were an agreement made between members of a trade association " there shall be substituted the words " subsection (1) of this section applies by virtue of section 112 of the Act of 1973 as if it were an agreement made between members of an association ", and for the words " subsection (7) of the said section six " there shall be substituted the words " subsection (3) or subsection (4) of that section ".

In subsection (8), paragraph (*a*) shall be omitted, and for the words " section 8(8) of this Act ", in each place where they occur, there shall be substituted the words " section 115(6) of the Act of 1973 ".

Section of Act — *Modification*

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Section 11 ... In subsection (3)(*b*), the words " of manufacture " shall be omitted.

Section 14 ... In subsection (1), for paragraphs (*a*) and (*b*) there shall be substituted the following:

" (*a*) a person carrying on within the United Kingdom any business of supplying services brought under control by the relevant order, or

(*b*) an association which, in relation to the relevant order, is such an association as is mentioned in section 112(1) of the Act of 1973 ",

and for the words " any such matters as are described in paragraphs (*a*) to (*e*) of the said subsection (1) " there shall be substituted the words " matters specified in the relevant order for the purposes of section 107(1)(*b*) or section 108(1)(*b*) of the Act of 1973 ".

In subsection (3), the word " trade " shall be omitted.

In subsection (4), paragraph (*a*) shall be omitted, and for the words " section 8(8) of this Act " there shall be substituted the words " section 115(6) of the Act of 1973 ".

Section 15 ... In subsection (3A), for the words " a trade association which is not incorporated " there shall be substituted the words " an unincorporated association falling within section 112(1) of the Act of 1973 ".

Section 19 ... In subsection (1)(*b*), for the word " prices " there shall be substituted the word " charges ".

Section 20 ... In subsection (1), for the words " matters described in paragraphs (*b*) to (*d*) of subsection (8) of section eight of this Act " there shall be substituted the words " the supply of services outside the United Kingdom or the supply of services to persons or in relation to property (as defined by section 115(9) of the Act of 1973) outside the United Kingdom ".

In subsection (3), for the words " any trade association " there shall be substituted the words " any such association as is mentioned in section 112(1) of the Act of 1973 ", for the words " such a trade association " and for the words " a trade association " there shall be substituted the words " such an association ", and for the words " the trade association " there shall be substituted the words " the association ".

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Section of Act — *Modification*

Section 20 *Cont.* In subsection (4), for the words " subsection (7) of section six of this Act in an agreement for the constitution of a trade association " there shall be substituted the words " subsection (3) or subsection (4) of section 112 of the Act of 1973 in an agreement for the constitution of an association ".

PART II

MODIFICATIONS OF ACT OF 1968

Section 1 ... In subsection (2), for the words " purchasers, consumers or users of any relevant goods " there shall be substituted the words " users of any relevant services ".

Section 2 ... In subsection (1), for the words " prices to be charged " there shall be substituted the words " charges to be made " and for the word " prices ", in the second place where it occurs, there shall be substituted the word " charges ".

Section 3 ... In subsection (1), for the words " a trade association " there shall be substituted the words " an association ", and for the words " subsection (7) of section 6 of the Act of 1956 " and the words in parenthesis immediately after those words there shall be substituted the words " subsection (3) or subsection (4) (as the case may be) of section 112 of the Act of 1973 ".

In subsections (2) and (6), for the words " a trade association ", in each place where they occur, there shall be substituted the words " an association ".

Section 6 ... In subsection (1), after paragraph (*i*) there shall be inserted the following paragraph:—

" (*j*) in the case of an agreement which becomes subject to registration by virtue of an order under section 107 or section 108 of the Act of 1973 coming into force after the making of the agreement, within three months from the day on which the agreement becomes so subject."

Section 7 ... In subsection (3), for the words " any trade association " there shall be substituted the words " any such association as is mentioned in section 112(1) of the Act of 1973 ", and for the words " a trade association " there shall be substituted the words " an association ".

Section of Act — *Modification*

Sch. 10

Section 7 *Cont.* In subsection (3A), for the words " a trade association " there shall be substituted the words " such an association as is mentioned in section 112(1) of the Act of 1973 ", and for the words " the trade association " there shall be substituted the words " the association ".

In subsection (4), for the words " a trade association " there shall be substituted the words " an association " and for the words " subsection (7) of section 6 of the Act of 1956 " there shall be substituted the words " subsection (3) or subsection (4) of section 112 of the Act of 1973 ".

Sections 139, 140.

SCHEDULE 11

TRANSITIONAL PROVISIONS AND SAVINGS

General provisions

1.—(1) Subject to the following provisions of this Schedule, in so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act, it shall not be invalidated by the repeal but shall have effect as if done under that provision.

(2) In relation to the Commission (by whichever of the names mentioned in section 4(1) of this Act it was for the time being called) sub-paragraph (1) of this paragraph applies, in particular, to any appointment of a member of the Commission (including any appointment, or extension of the term of service, of a chairman or deputy chairman of the Commission) or of any of the staff of the Commission, any reference made to the Commission, any proceedings or report of the Commission on such a reference, and any order made in consequence of any such report.

(3) A provision of this Act shall, for the purposes of this Schedule, be regarded as corresponding to an enactment repealed by this Act if (notwithstanding that it differs, whether to a small extent or substantially, from that enactment) it fulfils in this Act a purpose similar to that which that enactment fulfilled in the repealed enactments; and any reference in this Schedule to provisions of the repealed enactments corresponding to any provisions of this Act shall be construed accordingly.

(4) In this Schedule " the repealed enactments " means the enactments repealed by this Act, and " the commencement of this Act ", where that expression occurs in any provision of this Schedule,—

(*a*) if the same day is appointed under section 140 of this Act for the repeal of all those enactments, means the day so appointed, or

(*b*) if different days are appointed under that section for the repeal of different enactments, means such day as may be specified for the purposes of this sub-paragraph in an

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order made by the Secretary of State by statutory instrument;

and different days may be so specified in relation to different provisions of this Schedule.

2. For the purposes of the operation of paragraph 1 of this Schedule, anything done by or in relation to the Board of Trade shall be treated as having been done by or in relation to the Secretary of State, whether apart from this paragraph it would fall to be so treated or not.

3. Without prejudice to any express amendment made by this Act, where an Act (whether passed before, or in the same Session as, this Act) or any document refers, either expressly or by implication, to an enactment repealed by this Act, the reference shall, except where the context otherwise requires, be construed as, or as including, a reference to any corresponding provision of this Act.

4. Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, and there is a corresponding provision in this Act, this Act shall have effect as if that corresponding provision had been in force when that period began to run.

5. Without prejudice to paragraph 1 of this Schedule, any reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or omitted to be done, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of any provisions of this Act shall, except where the context otherwise requires, be construed as including a reference to the corresponding thing done or required or authorised to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of any corresponding provisions of the repealed enactments.

6. Nothing in this Act shall affect the repealed enactments in their operation in relation to offences committed before the commencement of this Act.

Reference made to Commission before commencement of Act

7.—(1) Any reference made to the Commission under the repealed enactments, and any report of the Commission made before the commencement of this Act on any such reference, shall have effect in accordance with paragraph 1 of this Schedule if made in accordance with such of the repealed enactments as were applicable to it, and shall so have effect notwithstanding that the reference or report was not made in accordance with the corresponding provisions of this Act.

(2) In the case of any such reference on which the Commission have not made their report before the commencement of this Act—

(*a*) any proceedings of the Commission on that reference after the commencement of this Act shall be conducted in accordance with the repealed enactments as if they had not been repealed, and

(*b*) any report of the Commission on that reference shall be made in accordance with those enactment and not in accordance with any corresponding provisions of this Act;

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but nothing in this sub-paragraph shall be construed as excluding the operation of any provisions of this Act relating to any functions of the Director in relation to the Commission, to the transmission to the Director of copies of reports of the Commission, or to any other action authorised or required to be taken in relation to or in consequence of a report made by the Commission.

(3) In particular, but without prejudice to the generality of the preceding sub-paragraphs, any reference, proceedings or report to which either of those sub-paragraphs applies shall have effect, or shall be conducted or made, as mentioned in that sub-paragraph notwithstanding that the reference or report related or relates to the question whether conditions to which the Act of 1948 applied prevailed or prevail, and not to the existence or possible existence of a monopoly situation within the meaning of this Act.

(4) For the purposes of the operation of sub-paragraph (2) of this paragraph in relation to a report made by the Commission after the commencement of this Act, section 29(1) of the Act of 1956 (whereby conditions to which the Act of 1948 applied were not to be considered to prevail by reason of any agreement to which Part I of the Act of 1956 applied) shall be construed as if section 6(1) of the Act of 1956 had been originally enacted as amended by section 95 of this Act.

Report of Commission made before 5th August 1965

8. An order made under section 56 of this Act in consequence of a report made by the Commission before the commencement of the Act of 1965 shall not exercise any of the powers specified in Part II of Schedule 8 to this Act; and accordingly the powers conferred by section 89 of this Act shall not be exercisable in consequence of any such report.

Undertaking given in consequence of report on reference made under repealed enactments

9.—(1) This paragraph applies to any undertaking given to a Minister which is certified by the Secretary of State to have been given in relation to matters dealt with in a report made by the Commission on a reference under section 2 of the Act of 1948 or on a reference under section 6 of the Act of 1965 and which either—

(*a*) was given before the commencement of this Act, or

(*b*) is given after the commencement of this Act in a case where no request under subsection (1) of section 88 of this Act has been made to the Director to carry out consultations in accordance with that subsection.

(2) A copy of any certificate given by the Secretary of State under the preceding sub-paragraph shall be furnished to the Director; and the Minister to whom any such undertaking was or is given shall furnish particulars of it to the Director.

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(3) Subsection (4) of section 88 of this Act shall have effect in relation to any undertaking to which this paragraph applies as if—

(*a*) it were an undertaking of which particulars have been furnished to the Director under subsection (2) of that section, and

(*b*) any reference in subsection (4) of that section to the report of the Director were a reference to a report made by the Commission as mentioned in sub-paragraph (1) of this paragraph.

(4) The preceding provisions of this paragraph shall have effect without prejudice—

(*a*) to the duty of the Commission under section 86 of this Act to transmit to the Director copies of reports which were made by the Commission before the commencement of this Act and which, by virtue of paragraphs 1 and 7 of this Schedule, have effect as if made under this Act, or

(*b*) to any duty of the Director, where requested by the appropriate Minister or Ministers to do so with respect to any such report, to carry out such consultations as are mentioned in section 88(1) of this Act.

Functions of Director in relation to orders made under Acts of 1948 and 1965

10. Subsection (5) of section 88 of this Act shall have effect in relation to any order which was made under section 10 of the Act of 1948 or under section 3 or section 6 of the Act of 1965 and which, by virtue of paragraph 1 of this Schedule, has effect as if made under this Act, as that subsection has effect in relation to orders made under this Act in the circumstances specified in that subsection.

Provisions consequential upon transfer of functions from Registrar to Director

11.—(1) Except as provided by paragraph 15 of this Schedule, in relation to any time after the commencement of this Act, anything which has before the commencement of this Act been done by or in relation to the Registrar shall have effect as if it had been done by or in relation to the Director.

(2) Sub-paragraph (1) of this paragraph applies, in particular, to any regulations made by the Registrar, any register kept or document issued by the Registrar, any particulars furnished to the Registrar, and any application to or proceedings before the Restrictive Practices Court, or any other court, tribunal or authority, made or instituted by or against the Registrar or to which the Registrar was otherwise a party; and any such proceedings, if pending at the commencement of this Act, may accordingly be continued by or against the Director, or with the Director being otherwise treated as a party to them, as the circumstances may require, and for the purpose of so continuing them anything done by or in relation to the Registrar in connection with any such proceedings shall be treated as having been done by or in relation to the Director.

(3) In this Schedule "the Registrar" means the Registrar of Restrictive Trading Agreements.

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Particulars of export agreements

12. Any particulars furnished to the Board of Trade or to the Secretary of State under section 31(1) of the Act of 1956 shall be treated as if they had been furnished to the Director under section 10 of that Act as amended by sections 94(2) and 102(1) of this Act.

Restrictive Trade Practices Act 1968, *s.* 11

13. An agreement which—

(*a*) was made before the commencement of this Act by a society at a time when it was approved for the purposes of section 11 of the Act of 1968 (wholesale co-operative societies), and

(*b*) by virtue of that approval was not subject to registration under Part I of the Act of 1956,

shall, notwithstanding the repeal of that section, not be subject to such registration.

Pension benefits

14. The repeal by this Act of the following enactments, that is to say, Part II of Schedule 1 to the Act of 1965 and section 3(4)(*d*) of the Superannuation (Miscellaneous Provisions) Act 1967, shall not affect the operation of those enactments in relation to any person who was appointed to be chairman or deputy chairman of the Commission before the commencement of this Act; and, in relation to any such person, a recommendation made under paragraph 5 of that Schedule shall have effect whether made before or after the commencement of this Act. 1967 c. 28.

15.—(1) The repeal by this Act of subsections (7) and (8) of section 1 of the Act of 1956 shall not affect the operation of those subsections in relation to any person who was appointed to be the Registrar before the commencement of this Act; and, in relation to any such person, a determination made under subsection (7) of that section shall have effect whether made before or after the commencement of this Act.

(2) Paragraph 11 of this Schedule shall not have effect for the purposes of the operation of subsection (7) or subsection (8) of section 1 of the Act of 1956 in accordance with the preceding sub-paragraph.

Trade Descriptions Act 1968, *s.* 30

16. The repeal by this Act of subsections (2) to (4) of section 30 of the Trade Descriptions Act 1968 shall not affect the operation of those subsections in their application to any case where a notice under subsection (2) of that section, or a certificate under subsection (4) of that section or a document purporting to be such a certificate, has been given or issued before the commencement of this Act; and the duty imposed by section 130(1) of this Act shall not apply where such a notice has been so given. 1968 c. 29.

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Section 139.

SCHEDULE 12

ENACTMENTS AMENDED

Act	*Amendment*
The Patents Act 1949 (12, 13 & 14 Geo. 6. c. 87).	In section 43, in subsection (6), for the words " Monopolies and Restrictive Practices Commission " there shall be substituted the words " Monopolies and Mergers Commission ", and for the words " section nine of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 " there shall be substituted the words " Part VII of the Fair Trading Act 1973 ".
The Restrictive Trade Practices Act 1956 (4 & 5 Eliz. 2. c. 68).	In section 6, in subsection (1), for the words " the two next following sections " there shall be substituted the words " sections 7 and 8 of this Act ". In section 22, after subsection (4) there shall be inserted the following subsection:— " (5) The foregoing provisions of this section shall not apply in relation to any order made under section 21A of this Act.". In section 23, in subsection (2), after the words " this Part of the Act " there shall be inserted the words " or under Part III of the Fair Trading Act 1973 ". In section 30, in subsection (2), for the words " the said section ten " there shall be substituted the words " section 56 of the Fair Trading Act 1973, or having effect as if made under that section ". In section 36, in subsection (1), before the definition of " enactment " there shall be inserted the following:— " ' the Director ' means the Director General of Fair Trading appointed under the Fair Trading Act 1973.". In the Schedule, at the beginning of paragraph 7 there shall be inserted the words " Except as provided by section 42 of the Fair Trading Act 1973 "; at the end of paragraph 8 there shall be inserted the words " but this paragraph shall not apply to appeals under section 42 of the Fair Trading Act 1973 "; and in paragraph 10, after the word " Act " there shall be inserted the words " or under Part III of the Fair Trading Act 1973 ".

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Act	*Amendment*
The Agricultural Marketing Act 1958 (6 & 7 Eliz. 2. c. 47).	In section 47, in the proviso to subsection (2), after paragraph (*a*) there shall be inserted the following paragraph:— " (*aa*) made to the Monopolies and Mergers Commission, or to any member of that Commission or to any of the staff of that Commission, or to the Director General of Fair Trading or any of the staff appointed by that Director General, if it is made for the purpose of enabling the Commission or the Director General to perform any functions of theirs or his under the Fair Trading Act 1973.".
The Public Records Act 1958 (6 & 7 Eliz. 2. c. 51).	In Schedule 1, in Part II of the Table set out at the end of paragraph 3, for the words " Registrar of Restrictive Trading Agreements " there shall be substituted the words " the Director General of Fair Trading ".
The Agricultural Marketing Act (Northern Ireland) 1964 (c. 13).	In section 23, in subsection (2), after paragraph (*aa*) there shall be inserted the following paragraph:— " (*aaa*) made to the Monopolies and Mergers Commission, or to any member of that Commission or to any of the staff of that Commission, or to the Director General of Fair Trading or any of the staff appointed by that Director General, if it is made for the purpose of enabling the Commission or the Director General to perform any functions of theirs or his under the Fair Trading Act 1973.".
The Resale Prices Act 1964 (1964 c. 58).	In section 11(1), after the definition of " dealer " there shall be inserted the following:— " ' the Director ' means the Director General of Fair Trading.".
The Iron and Steel Act 1967 (c. 17).	In section 33, in subsection (4), for the words " Registrar of Restrictive Trading Agreements " there shall be substituted the words " Director General of Fair Trading " and, in subsection (5), for the word " Registrar " there shall be substituted the word " Director ".

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1965 c. 50.

Act	*Amendment*
The Restrictive Trade Practices Act 1968 (1968 c. 66).	In section 6, in subsection (1), after paragraph (*g*) there shall be inserted the following paragraphs:— "(*h*) in the case of an agreement made before the commencement of the Fair Trading Act 1973 which becomes subject to registration in consequence of section 95 or section 101 of that Act, within three months from the coming into operation of Part IX of that Act; (*i*) in the case of an agreement which becomes subject to registration by virtue of the expiration or withdrawal of an approval given under section 6A of the Act of 1956, within three months from the day on which the agreement become so subject.". In section 12, in subsection (3), for the words "Section 11 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948" there shall be substituted the words "Section 93 of the Fair Trading Act 1973", and for the words "under section 10 of that Act" there shall be substituted the words "to which section 90 of that Act applies" and, in subsection (4), for the words "Board of Trade pursuant to section 31" there shall be substituted the words "Director pursuant to section 10(8)".
The Pensions (Increase) Act 1971 (1971 c. 56).	In Schedule 2, in paragraph 6, for the words from "the Chairman" to the end of the paragraph there shall be substituted the words "widows and children of any chairman or deputy chairman of the Commission which, by virtue of section 4(1) of the Fair Trading Act 1973, is known as the Monopolies and Mergers Commission, or payable out of moneys provided by Parliament in accordance with any recommendation made under paragraph 5 of Schedule 1 to the Monopolies and Mergers Act 1965 (chairman or deputy chairman of the Commission)".
The European Communities Act 1972 (1972 c. 68).	In section 10, for the word "Registrar", in each place where it occurs, there shall be substituted the word "Director"; and after subsection (2) there shall be inserted the following subsection:— "(2A) In this section 'the Director' means the Director General of Fair Trading."

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Act	*Amendment*
The Local Government Act 1972 (1972 c. 70).	In section 201, in subsection (6)(*a*), after the words "Trade Descriptions Acts 1968 and 1972" there shall be inserted the words "or the Fair Trading Act 1973".

SCHEDULE 13

Enactments Repealed

Chapter	Short Title	Extent of Repeal
11 & 12 Geo. 6. c. 66.	The Monopolies and Restrictive Practices (Inquiry and Control) Act 1948.	The whole Act.
4 & 5 Eliz. 2. c. 68.	The Restrictive Trade Practices Act 1956.	In section 1, subsection (1), and subsections (3) to (8). In section 11(7), the words "assistant registrar or other". In section 23, subsection (4). In section 24, subsection (8). Section 29. In section 30, in subsection (3), the words from the beginning of the subsection to the word "and", and subsections (4), (6) and (7). Section 31. Section 33. In section 35, paragraph (*a*) of subsection (1). In section 36(1), the definition of "the Registrar".
5 & 6 Eliz. 2. c. 20.	The House of Commons Disqualification Act 1957.	In Part III of Schedule 1, and in the Part substituted for the said Part III by Schedule 3, the words "Registrar of Restrictive Trading Agreements".
6 & 7 Eliz. 2. c. 51.	The Public Records Act 1958.	In Schedule 2, the entries relating to section 17 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 and section 33 of the Restrictive Trade Practices Act 1956.
1964 c. 58.	The Resale Prices Act 1964.	In section 8, subsection (4). In section 11(1), the definition of "the Registrar".

PART II

Meaning of "withhold supplies" in relation to Part II.

12.—(1) For the purposes of this Part of this Act a supplier of goods shall be treated as withholding supplies of goods from a dealer—

(*a*) if he refuses or fails to supply those goods to the order of the dealer;

(*b*) if he refuses to supply those goods to the dealer except at prices, or on terms or conditions as to credit, discount or other matters, which are significantly less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or

(*c*) if, although he contracts to supply the goods to the dealer, he treats him in a manner significantly less favourable than that in which he normally treats other such dealers in respect of times or methods of delivery or other matters arising in the execution of the contract.

(2) For the purposes of this Part a supplier shall not be treated as withholding supplies of goods on any such ground as is mentioned in section 11(1) above if, in addition to that ground, he has other grounds which, standing alone, would have led him to withhold those supplies.

(3) If in proceedings brought against a supplier of goods in respect of a contravention of section 11 it is proved that supplies of goods were withheld by the supplier from a dealer, and it is further proved—

(*a*) that down to the time when supplies were so withheld the supplier was doing business with the dealer or was supplying goods of the same description to other dealers carrying on business in similar circumstances, and

(*b*) that the dealer, to the knowledge of the supplier, had within the previous six months acted as described in section 11(1)(*a*), or had indicated his intention to act as described in paragraph (*b*) of that subsection in relation to the goods in question,

it shall be presumed, unless the contrary is proved, that the supplies were withheld on the ground that the dealer had so acted or was likely so to act.

This subsection does not apply where the proof that supplies were withheld consists only of evidence of requirements imposed by the supplier in respect of the time at which or the form in which payment was to be made for goods supplied or to be supplied.

PART II

Exception for measures against loss leaders.

13.—(1) It is not unlawful by virtue of section 11 above for a supplier to withhold supplies of any goods from a dealer, or to cause or procure another supplier to do so, if he has reasonable cause to believe that within the previous twelve months the dealer or any other dealer to whom the dealer supplies goods has been using as loss leaders any goods of the same or a similar description, whether obtained from that supplier or not.

(2) The reference in this section to the use of goods as loss leaders is a reference to a resale of the goods effected by the dealer, not for the purpose of making a profit on the sale of those goods, but for the purpose of attracting to the establishment at which the goods are sold customers likely to purchase other goods or otherwise for the purpose of advertising the business of the dealer.

(3) A sale of goods shall not be treated for the purposes of this section as the use of those goods as loss leaders—

(*a*) where the goods are sold by the dealer at a genuine seasonal or clearance sale, not having been acquired by the dealer for the purpose of being resold as mentioned in this section; or

(*b*) where the goods are resold as mentioned in this section with the consent of the manufacturer of the goods or, in the case of goods made to the design of a supplier or to the order and bearing the trade mark of a supplier, of that supplier.

Applications to the Restrictive Practices Court in relation to exemptions

Exemption of goods by the Court.

14.—(1) Upon an application under section 16 or section 17 below the Restrictive Practices Court ("the Court") may make an order in accordance with this section directing that goods of any class shall be exempted goods for the purposes of this Part of this Act.

(2) The order referred to in subsection (1) above may be made if it appears to the Court that in default of a system of maintained minimum resale prices applicable to those goods—

(*a*) the quality of the goods available for sale, or the varieties of the goods so available, would be substantially reduced to the detriment of the public as consumers or users of those goods; or

(*b*) the number of establishments in which the goods are sold by retail would be substantially reduced to the detriment of the public as such consumers or users; or

PART II

(*c*) the prices at which the goods are sold by retail would in general and in the long run be increased to the detriment of the public as such consumers or users; or

(*d*) the goods would be sold by retail under conditions likely to cause danger to health in consequence of their misuse by the public as such consumers or users; or

(*e*) any necessary services actually provided in connection with or after the sale of the goods by retail would cease to be so provided or would be substantially reduced to the detriment of the public as such consumers or users;

and in any such case that the resulting detriment to the public as consumers or users of the goods in question would outweigh any detriment to them as such consumers or users (whether by the restriction of competition or otherwise) resulting from the maintenance of minimum resale prices in respect of the goods.

In this section—

"necessary services", in relation to goods, means services which, having regard to the character of the goods, are required to guard against the risk of injury, whether to persons or to premises, in connection with the consumption, installation or use of the goods, or are otherwise reasonably necessary for the benefit of consumers or users; and

"consumers" and "users" include persons consuming or using for the purpose or in the course of trade or business or for public purposes.

Who may apply to the Court.

15. An application to the Court under section 16 or section 17 below may be made by—

(*a*) the Director General of Fair Trading ("the Director");

(*b*) any supplier of goods of the class in question; or

(*c*) any trade association whose members consist of or include such suppliers.

New applications.

16.—(1) Upon an application under this section the Court may make an order under section 14 above directing that goods of any class specified in the order other than goods in respect of which—

1964 c. 58.

(*a*) a reference has been made under section 5 of the Resale Prices Act 1964, or

(*b*) a previous application has been made under this section,

shall be exempted goods for the purposes of this Part of this Act.

PART II

(2) No application shall be made under this section except with the Court's leave, and that leave shall not be granted except upon prima facie evidence of facts upon which an order could be made in accordance with section 14 in respect of the goods in question, or could be so made if any detriment to the public resulting from the maintenance of minimum resale prices were disregarded.

Court's power to review its decisions.

17.—(1) Upon an application under this section the Court may—

(*a*) discharge any order previously made by the Court directing that goods of any class shall be exempted goods;

(*b*) make an order under section 14 above directing that goods of any class shall be exempted goods for the purposes of this Act where the Court has in respect of that class of goods previously refused to make such an order or has previously discharged such an order.

(2) No application shall be made under this section except with the Court's leave, and that leave shall not be granted except upon prima facie evidence of a material change in the relevant circumstances since the Court's last decision in respect of the goods in question.

Facts found under the Restrictive Trade Practices Act 1976 c. 34. 1956 c. 68.

18. Upon an application under section 16 or section 17 above in respect of goods of any class which have been the subject of proceedings in the Court under Part I of the Restrictive Trade Practices Act 1976 (or under Part I of the Restrictive Trade Practices Act 1956) the Court may treat as conclusive any findings of fact made in those proceedings, and shall do so unless prima facie evidence is given of a material change in the relevant circumstances since those proceedings.

Effect of exemption order.

19. Where an exemption order is made under section 14 above—

(*a*) section 9 above does not apply in relation to any contract of sale or other agreement relating to exempted goods of the class specified in the order, or anything done in relation to such goods; and

(*b*) notwithstanding section 11 above, a supplier may withhold supplies of any such goods from a dealer seeking to obtain them for resale in the United Kingdom on the ground that the dealer—

(i) has sold in the United Kingdom at a price below the resale price (which means the same in this paragraph as in section 11) exempted goods obtained, either directly or indirectly, from that supplier or has supplied such goods, either directly or indirectly to a third party who had done so, or

Resale Prices Act 1976

1976 CHAPTER 53

An Act to consolidate those provisions of the Resale Prices Act 1964 still having effect, Part II of the Restrictive Trade Practices Act 1956, and related enactments; and to repeal the provisions of the Resale Prices Act 1964 and the Restrictive Trade Practices Act 1968 which have ceased to have any effect. [26th October 1976]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PROHIBITION OF COLLECTIVE RESALE PRICE MAINTENANCE

Collective agreement by suppliers.

1.—(1) It is unlawful for any two or more persons carrying on business in the United Kingdom as suppliers of any goods to make or carry out any agreement or arrangement by which they undertake—

(*a*) to withhold supplies of goods for delivery in the United Kingdom from dealers (whether party to the agreement or arrangement or not) who resell or have resold goods in breach of any condition as to the price at which those goods may be resold;

(*b*) to refuse to supply goods for delivery in the United Kingdom to such dealers except on terms and conditions which are less favourable than those applicable in the case of other dealers carrying on business in similar circumstances; or

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Chapter	Short Title	Extent of Repeal
1965 c. 50.	The Monopolies and Mergers Act 1965.	The whole Act.
1967 c. 28.	The Superannuation (Miscellaneous Provisions) Act 1967.	In section 3, paragraph (*d*) of subsection (4).
1968 c. 29.	The Trade Descriptions Act 1968.	In section 30, subsections (2) to (4).
1968 c. 66.	The Restrictive Trade Practices Act 1968.	Section 11.
1972 c. 68.	The European Communities Act 1972.	In section 10, subsection (3).

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Resale Prices Act 1976

CHAPTER 53

ARRANGEMENT OF SECTIONS

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SCHEDULES:

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PART I

(c) to supply goods only to persons who undertake or have undertaken—

(i) to withhold supplies of goods as described in paragraph (a) above; or

(ii) to refuse to supply goods as described in paragraph (b) above.

(2) It is unlawful for any two or more such persons to make or carry out any agreement or arrangement authorising—

(a) the recovery of penalties (however described) by or on behalf of the parties to the agreement or arrangement from dealers who resell or have resold goods in breach of any such condition as is described in paragraph (a) of subsection (1) above; or

(b) the conduct of any domestic proceedings in connection therewith.

Collective agreement by dealers.

2.—(1) It is unlawful for any two or more persons carrying on business in the United Kingdom as dealers in any goods to make or carry out any agreement or arrangement by which they undertake—

(a) to withhold orders for supplies of goods for delivery in the United Kingdom from suppliers (whether party to the agreement or arrangement or not)—

(i) who supply or have supplied goods otherwise than subject to such a condition as is described in paragraph (a) of section 1(1) above; or

(ii) who refrain or have refrained from taking steps to ensure compliance with such conditions in respect of goods supplied by them;

or,

(b) to discriminate in their handling of goods against goods supplied by such suppliers.

(2) It is unlawful for any two or more such persons to make or carry out any agreement or arrangement authorising—

(a) the recovery of penalties (however described) by or on behalf of the parties to the agreement or arrangement from such suppliers; or

(b) the conduct of any domestic proceedings in connection therewith.

Recommendations.

3. It is unlawful for any person carrying on business in the United Kingdom as a supplier of or dealer in any goods to make to any other person carrying on such a business any recommendation to act in such a manner that, if there were an agreement between those persons so to act, the agreement would be unlawful by virtue of section 1 or section 2 above.

PART I

Associations.

4. Sections 1 to 3 above apply in relation to an association the members of which consist of or include persons carrying on business in the United Kingdom as suppliers of or dealers in any goods, or representatives of such persons, as they apply in relation to a person so carrying on business.

Exclusive dealing.

5. A contract for the sale of goods to which not more than two persons are party is not unlawful under this Part of this Act by reason only of undertakings by the purchaser in relation to the goods sold and by the vendor in relation to other goods of the same description.

Discounts and part exchanges.

6. For the purposes of this Part of this Act a condition—

(a) as to the amount of discount which may be allowed on the resale of any goods, or

(b) as to the price which may be paid on the resale of any goods for other goods taken by way of exchange,

shall be treated as a condition as to the price at which goods may be resold.

Hire-purchase agreements.

7. The provisions of Schedule 1 to this Act, which relate to hire-purchase agreements, have effect for the purposes of this Part of this Act.

Interpretation of Part I.

8.—(1) In this Part of this Act—

"goods" includes ships and aircraft, minerals, substances and animals (including fish);

"price" includes a charge of any description;

"supply" includes supply by way of lease or hire, and "acquire" shall be construed accordingly.

(2) This Part applies to the construction or carrying out of buildings, structures and other works by contractors, as it applies to the supply of goods, and for the purposes of this Part any buildings, structures or other works so constructed or carried out shall be deemed to be delivered at the place where they are constructed or carried out.

(3) For the purposes of this Part a person shall not be deemed to carry on a business within the United Kingdom by reason only of the fact that he is represented for the purposes of that business by an agent within the United Kingdom.

(4) For the purposes of any provision of this Part referring to two or more or not more than two persons, two or more persons being interconnected bodies corporate or individuals carrying on business in partnership with each other shall be treated as a single person.

PART II

INDIVIDUAL MINIMUM RESALE PRICE MAINTENANCE

Prohibition of individual resale price maintenance

Minimum resale prices maintained by contract or agreement.

9.—(1) Any term or condition—

(a) of a contract for the sale of goods by a supplier to a dealer, or

(b) of any agreement between a supplier and a dealer relating to such a sale,

is void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the resale of the goods in the United Kingdom.

(2) It is unlawful for a supplier of goods (or for an association or person acting on behalf of such suppliers)—

(a) to include in a contract for sale or agreement relating to the sale of goods a term or condition which is void by virtue of this section;

(b) to require, as a condition of supplying goods to a dealer, the inclusion in a contract or agreement of any such term or condition, or the giving of any undertaking to the like effect;

(c) to notify to dealers, or otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the resale of the goods in the United Kingdom.

Paragraph (a) does not affect the enforceability of a contract of sale or other agreement, except in respect of the term or condition which is void by virtue of this section.

Paragraph (c) is not to be construed as precluding a supplier (or an association or person acting on behalf of a supplier) from notifying to dealers or otherwise publishing prices recommended as appropriate for the resale of goods supplied or to be supplied by the supplier.

Patented articles under s. 9.

10.—(1) Section 9 above applies to patented articles (including articles made by a patented process) as it applies to other goods.

(2) Notice of any term or condition which is void by virtue of section 9, or which would be so void if included in a contract of sale or agreement relating to the sale of any such article, is of no effect for the purpose of limiting the right of a dealer to dispose of that article without infringement of the patent.

PART II

(3) Nothing in section 9 and in this section affects the validity, as between the parties and their successors, of any term or condition—

(a) of a licence granted by the proprietor of a patent or by a licensee under any such licence; or

(b) of any assignment of a patent,

so far as it regulates the price at which articles produced or processed by the licensee or assignee may be sold by him.

(4) References in this section to patented articles include references to—

(a) articles protected by the registration of a design, and

(b) articles protected by plant breeders' rights or a protective direction under Schedule 1 to the Plant Varieties and Seeds Act 1964, 1964 c. 14.

and references in this section to a patent shall be construed accordingly.

Minimum resale prices maintained by other means.

11.—(1) It is unlawful for a supplier to withhold supplies of any goods from a dealer seeking to obtain them for resale in the United Kingdom on the ground that the dealer—

(a) has sold in the United Kingdom at a price below the resale price goods obtained, either directly or indirectly, from that supplier, or has supplied such goods, either directly or indirectly, to a third party who had done so; or

(b) is likely, if the goods are supplied to him, to sell them in the United Kingdom at a price below that price, or supply them, either directly or indirectly, to a third party who would be likely to do so.

(2) In this section "the resale price", in relation to a sale of any description, means—

(a) any price notified to the dealer or otherwise published by or on behalf of a supplier of the goods in question (whether lawfully or not) as the price or minimum price which is to be charged on or is recommended as appropriate for a sale of that description; or

(b) any price prescribed or purporting to be prescribed for that purpose by a contract or agreement between the dealer and any such supplier.

(3) Where under this section it would be unlawful for a supplier to withhold supplies of goods it is also unlawful for him to cause or procure any other supplier to do so.

PART II

(ii) is likely, if the exempted goods are supplied to him, to sell them in the United Kingdom at a price below that price, or supply them, either directly or indirectly, to a third party who would be likely to do so.

Discharge of exemption order.

20. Where, by virtue of a decision of the Court under section 17(1)(*a*) above, section 9 above takes effect, that section, so far as it affects the validity of any term or condition of a contract or agreement for or relating to the sale of any goods, or the effect of notice of any term or condition so relating, applies to contracts and agreements made and notices given before as well as after that section takes effect, and—

(*a*) for the purposes of the jurisdiction of any court to grant an injunction in proceedings pending at the time when section 9 takes such effect, that section shall be treated as if it had taken effect before the cause of action arose; and

(*b*) any injunction granted or undertaking given before section 9 takes such effect in or for the purpose of any proceedings shall be of no effect in so far as it would operate to require compliance with any term or condition which is void, or notice of which is invalidated, by virtue of that section.

Supplementary provisions as to applications to the Court. 1976 c. 33.

21.—(1) Rules made by virtue of section 9(1) of the Restrictive Practices Court Act 1976 in relation to an application under this Part of this Act shall include provisions—

(*a*) for enabling the Court, on the application of the Director or of any party interested, to give directions with respect to the goods to be included in or excluded from any application under this Part of this Act;

(*b*) for securing that retailers, and trade associations representing employees in the distributive trades, who—

(i) have an interest in any such application, and

(ii) have given notice to the Director within such time and in such manner as may be prescribed by the rules,

are entitled, whether in consequence of a representation order or otherwise, to be represented before the Court in the proceedings.

(2) Without prejudice to the generality of section 9(1) of the Restrictive Practices Court Act 1976, rules made under that subsection in relation to an application under this Part of this Act may provide—

(*a*) for enabling a single application to be made to the Court in respect of a number of related classes of goods, or separate applications made in respect of related classes, to be heard together;

PART II

(*b*) for enabling the Court to determine in a summary way any issue arising in relation to a class of goods where it appears to the Court that the class of goods and the circumstances of the case are substantially similar to the class of goods and circumstances considered in any previous proceedings before the Court;

(*c*) for enabling the Court to make an order for the payment by any party of costs in respect of proceedings in which he is guilty of unreasonable delay, or in respect of any improper, vexatious, prolix or unnecessary proceedings or any other unreasonable conduct on his part.

(3) The Court does not have power to order the payment of costs by any party to proceedings on an application under this Part of this Act, except—

(*a*) so far as may be the case under rules made as provided by subsection (2) above;

(*b*) as is provided by subsection (4) below.

(4) The Court may order the payment by the Director of all or any of the following costs incurred by any other party—

(*a*) costs incurred on an application under section 16 above in respect of any issue determined in favour of that party, being an issue which in the Court's opinion substantially corresponds with an issue so determined in proceedings in respect of an agreement of which particulars are entered or filed in the register under the Restrictive Trade Practices Act 1976 (or under the Restrictive Trade Practices Act 1956);

1976 c. 34.
1956 c. 68.

(*b*) costs incurred on an application under section 17 above in respect of an issue determined in favour of that party.

Miscellaneous

22. The Director shall publish lists of the classes of goods in respect of which the Court has made, refused to make or discharged orders under this Part of this Act.

Listing of the Court's orders as to goods.

23. Nothing in this Part of this Act applies to an agreement which is expressly authorised by an enactment, or by a scheme, order or other instrument made under an enactment, or to anything done pursuant to any such agreement, scheme, order or instrument.

Statutory schemes.

PART II

Interpretation of Part II.

24.—(1) In this Part of this Act—

"dealer" means a person carrying on a business of selling goods, whether by wholesale or by retail;

"supplier" means a person carrying on a business of selling goods other than a business in which goods are sold only by retail;

"trade association" means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or persons represented by its members.

(2) Where—

(*a*) the dealer referred to in section 11(1)(*a*) above, or in section 13(1) above, or

(*b*) the supplier referred to in section 11(1)(*a*),

is one of a group of interconnected bodies corporate the reference includes a reference to any other dealer or, as the case may be, any other supplier who is also a member of that group.

PART III

GENERAL AND SUPPLEMENTAL

Contravention of and compliance with the Act.

25.—(1) No criminal proceedings lie against any person on the ground that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of sections 1 and 2 and sections 9 and 11 above.

(2) Without prejudice to the right of any person to bring civil proceedings by virtue of subsection (3) below, compliance with those sections shall be enforceable by civil proceedings on behalf of the Crown for an injunction or other appropriate relief.

(3) The obligation to comply with those sections is a duty owed to any person who may be affected by a contravention of them, and any breach of that duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

Individual resale price maintenance enforceable in certain cases.

26.—(1) The provisions of this section shall—

(*a*) apply where goods are sold by a supplier subject to a condition which is not unlawful under this Act as to the price at which those goods may be resold; and

(*b*) be interpreted as if they were provisions of Part I of this Act.

PART III

(2) Where goods are sold by a supplier subject to such a condition, either generally or by or to a specified class or person, that condition may be enforced by the supplier against any person—

(*a*) who is not party to the sale, and

(*b*) who subsequently acquires the goods with notice of the condition,

as if that person had been party to the sale.

(3) A condition shall not be enforceable by virtue of this section—

(*a*) in respect of the resale of any goods—

(i) by a person who acquires those goods otherwise than for the purpose of resale in the course of business; or

(ii) by any person who acquires them, whether immediately or not, from such a person;

(*b*) in respect of the resale of any goods—

(i) pursuant to an order of any court; or

(ii) by way of execution or distress; or

(iii) by any person who acquires them, whether immediately or not, after such resale.

(4) Nothing in this section shall be construed as enabling any person to enforce a condition imposed in pursuance of any restriction which is declared by an order of the Court for the time being in force under the Restrictive Trade Practices Act 197 or under the Restrictive Trade Practices Act 1956) to be contrary to the public interest.

1976 c. 34.
1956 c. 68.

(5) The court may, upon proof that goods sold by the plaintiff have been resold by the defendant in breach of a condition which is enforceable against him by virtue of this section, grant an injunction restraining the defendant from reselling in breach of any such condition any goods sold or to be sold by the plaintiff, whether of the same description as the goods proved to have been resold as described above or of any other description.

This subsection is without prejudice to any other relief which may be granted in proceedings against any person in respect of a breach or apprehended breach of such a condition.

Interpretation of the Act.

27. In this Act—

"the Court" means the Restrictive Practices Court;

"the Director" means the Director General of Fair Trading;

PART III "interconnected bodies corporate" means bodies corporate which are members of the same group, and for the purposes of this definition "group" means a body corporate and all other bodies corporate which are its subsidiaries—

1948 c. 38. (*a*) within the meaning of section 154 of the Companies Act 1948; or

1960 c. 22 (N.I.). (*b*) for companies in Northern Ireland, within the meaning of section 148 of the Companies Act (Northern Ireland) 1960; or

1968 c. 55. 1969 c. 24 (N.I.). (*c*) (in the case of an industrial and provident society) within the meaning of section 15 of the Friendly and Industrial and Provident Societies Act 1968 or section 47 of the Industrial and Provident Societies Act (Northern Ireland) 1969, as the case may be.

Application to Scotland. **28.** In the application of this Act to Scotland—

"assignment" means "assignation";

"defendant" means "defender";

"injunction" means "interdict";

"plaintiff" means "pursuer".

Transitional provisions, savings and repeals. **29.**—(1) The provisions of Schedule 2 to this Act have effect for the purposes of the Act.

(2) The enactments specified in Part I of Schedule 3 to this Act (consequential repeals) and Part II of that Schedule (repeals of provisions of the Resale Prices Act 1964 and the Restrictive Trade Practices Act 1968 which have ceased to have any effect) are hereby repealed to the extent specified in the third column of that Schedule.

1889 c. 63. (3) Nothing in this Act shall be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the operation of repeals).

Short title, extent and commencement. **30.**—(1) This Act may be cited as the Resale Prices Act 1976.

(2) This Act extends to Northern Ireland.

(3) This Act shall come into operation on such day as the Secretary of State may appoint by order made by statutory instrument.

SCHEDULES

SCHEDULE 1

Section 7.

HIRE-PURCHASE AGREEMENTS UNDER PART I

Hire-purchase agreements before amendment by the Consumer Credit Act 1974

1974 c. 39.

1.—(1) This paragraph shall cease to have effect on the making of an order under section 192(4) of the Consumer Credit Act 1974 bringing into operation the amendment contained in paragraph 17 of Schedule 4 to that Act.

(2) In Part I of this Act any reference to selling goods includes a reference to letting goods under a hire-purchase agreement as defined by section 1 of the Hire-Purchase Act 1965. 1965 c. 66.

(3) In the application of Part I—

(*a*) to Scotland, for the reference to a hire-purchase agreement as defined by section 1 of the Hire-Purchase Act 1965 substitute a reference to letting under a hire-purchase agreement as defined by section 1 of the Hire-Purchase (Scotland) Act 1965 or to an agreement to sell under a conditional sale agreement as defined by that section; and 1965 c. 67.

(*b*) to Northern Ireland, for the reference to section 1 of the Hire-Purchase Act 1965 substitute a reference to section 1 of the Hire-Purchase Act (Northern Ireland) 1966. 1966 c. 42 (N.I.).

Hire-purchase agreements after amendment by the Consumer Credit Act 1974

2.—(1) This paragraph shall not have effect until the making of an order under section 192(4) of the Consumer Credit Act 1974 bringing into operation the amendment contained in paragraph 17 of Schedule 4 to that Act, and sub-paragraph (2) below (which is in the same terms as that paragraph) shall then give effect to that amendment.

(2) In Part I of this Act any reference to selling goods includes a reference to bailing or (in Scotland) hiring goods under a hire-purchase agreement or to agreeing to sell the goods under a conditional sale agreement.

In this sub-paragraph—

"conditional sale agreement" means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled; and

SCH. 1 "hire-purchase agreement" means an agreement, other than a conditional sale agreement, under which—

(*a*) goods are bailed or (in Scotland) hired in return for periodical payments by the person to whom they are bailed or hired, and

(*b*) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—

(i) the exercise of an option to purchase by that person,

(ii) the doing of any other specified act by any party to the agreement,

(iii) the happening of any other specified event.

SCHEDULE 2

Section 29.

TRANSITIONAL PROVISIONS AND SAVINGS

General provisions

1.—(1) In so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under that provision.

(2) Without prejudice to sub-paragraph (1) above, any express or implied reference in and in relation to this Act to a thing done or not done or to an event shall (subject to its context) include a reference to the corresponding thing or event in relation to the repealed enactments.

2. Where a document refers expressly or by implication to an enactment repealed by this Act the reference shall (subject to its context) be construed as a reference to the corresponding provision of this Act.

3. Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, and there is a corresponding provision in this Act, this Act shall have effect as if that corresponding provision had been in force when that period began to run.

Proceedings of the Restrictive Practices Court under repealed enactments

4. Nothing in this Act affects the validity of the decisions and proceedings of the Restrictive Practices Court under any enactment repealed by this Act, and those decisions and proceedings shall have effect in relation to this Act accordingly.

SCHEDULE 3

Section 29

REPEALS

PART I

Consequential repeals

Chapter	Short title	Extent of repeal
4 & 5 Eliz. 2. c. 68.	The Restrictive Trade Practices Act 1956.	Part II. Sections 35 to 38.
1964 c. 58.	The Resale Prices Act 1964.	Sections 1 to 5. In section 6(5) from the beginning to "and". Sections 7, 8(2) and (3) and 10 to 14, and the Schedule.
1968 c. 66.	The Restrictive Trade Practices Act 1968.	Sections 14, 15, 16(3)(*b*) and 17(1).
1973 c. 41.	The Fair Trading Act 1973.	Section 94(2). In section 137(1), the definition of "the Act of 1964". In Schedule 12, the entries relating to the Resale Prices Act 1964, and to section 12 of the Restrictive Trade Practices Act 1968.
1976 c. 34.	The Restrictive Trade Practices Act 1976.	In Schedule 5, the entry relating to the Restrictive Trade Practices Act 1956.

PART II

Repeals of provisions of the Resale Prices Act 1964 and the Restrictive Trade Practices Act 1968 which have ceased to have any effect

Chapter	Short title	Extent of repeal
1964 c. 58.	The Resale Prices Act 1964.	Section 6(1) to (4). In section 6(5) from "and" to the end. Section 6(6). Section 8(1).
1968 c. 66.	The Restrictive Trade Practices Act 1968.	Section 12 and Schedule 1.

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PART I

(ii) documents or information obtained by him under this Act;

(c) of taking proceedings before the Restrictive Practices Court ("the Court") in respect of the agreements of which particulars are from time to time entered or filed in the register; but this paragraph is subject to—

(i) such directions as may be given by the Secretary of State as to the order in which those proceedings are to be taken;

(ii) section 21 below (Director's duties as to proceedings for investigation).

(3) The Court has jurisdiction, on the Director's application in respect of an agreement of which particulars are for the time being registered under this Act, to declare whether or not any restrictions or information provisions by virtue of which this Act applies to the agreement are contrary to the public interest; but this jurisdiction is subject to paragraphs 6(2) and 9(2) of Schedule 3 to this Act.

Restrictions against public interest and consequent Court orders.

2.—(1) Where under section 1(3) above any restrictions or information provisions by virtue of which this Act applies to an agreement are found by the Court to be contrary to the public interest, the agreement shall be void in respect of those restrictions or those information provisions.

(2) Without prejudice to subsection (1) above, the Court may, on the Director's application, make such order as appears to the Court to be proper for restraining all or any of those mentioned in subsection (3) below—

(a) from giving effect to, or enforcing or purporting to enforce, the agreement in respect of those restrictions or those information provisions;

(b) from making any other agreement (whether with the same parties or with other parties) to the like effect; or

(c) where such an agreement as is mentioned in paragraph (b) above has already been made, from giving effect to that agreement or enforcing or purporting to enforce it.

(3) Those who may be restrained by an order of the Court under subsection (2) above are—

(a) the persons party to the agreement who carry on business within the United Kingdom;

(b) a trade association or a services supply association of which any such person is a member; or

(c) any person acting on behalf of any such association.

PART I

(4) Where any of the parties to an agreement against whom an order under subsection (2) is made is a member of a trade association or of a services supply association, the order may include provisions for restraining the association and any person acting on behalf of the association from procuring or assisting any such party to do anything which would be a contravention of the order in its application to him.

(5) Where—

(a) any restriction accepted under a term implied by virtue of section 8(2) below in an agreement for the constitution of a trade association;

(b) any information provision made under a term implied by virtue of section 8(4) below in an agreement for the constitution of a trade association;

(c) any restriction accepted under a term implied by virtue of section 16(3) below in an agreement for the constitution of a services supply association;

(d) any information provision made under a term implied by virtue of section 16(5) below in an agreement for the constitution of a services supply association;

is found by the Court to be contrary to the public interest, the Court may (without prejudice to its powers under this section) make such order as appears to the Court to be proper for restraining the association or any person acting on behalf of the association from making any recommendation to which that term would apply.

(6) The powers of the Court under this and the preceding section are not affected by the determination of an agreement effected after the commencement of the proceedings, and where an agreement is varied after the commencement of the proceedings, the Court may make a declaration and, if it thinks fit, an order under subsection (2) or subsection (5) above, either in respect of the agreement as at the commencement of the proceedings or in respect of the agreement as varied, or both.

Interim orders of the Court.

3.—(1) Where the Director has made an application under section 1(3) above, he may apply to the Court for an interim order under this section—

(a) at any time before the Court has made an order under section 2(2) above in respect of the agreement, and

(b) whether before or after the Court has made a declaration under section 1(3) in respect of the agreement.

PART I

(2) An application under this section shall specify the restrictions or information provisions which appear to the Director, in relation to the agreement to which the application relates—

(a) to be restrictions or information provisions such as are mentioned in section 1(3), and

(b) to be contrary to the public interest, and

(c) to be restrictions or information provisions in respect of which, in accordance with the following provisions of this section, it would be appropriate for an interim order to be made.

(3) If on an application under this section the Court is satisfied that the following conditions are fulfilled in relation to all or any of the restrictions or information provisions specified in the application—

(a) that they are restrictions or information provisions such as are mentioned in section 1(3);

(b) that they could not reasonably be expected to be shown to fall within any of paragraphs (a) to (h) of section 10(1) below or any of paragraphs (a) to (h) of section 19(1) below, as the case may be; and

(c) that the operation of the restrictions or information provisions, during the period likely to elapse before an order can be made in respect of them under section 2(2), is likely to cause material detriment to the public or a section of the public generally, or to a particular person who is not a party to the agreement;

the Court may, if it thinks fit, make an interim order specifying the restrictions or information provisions in relation to which the Court is satisfied that those conditions are fulfilled.

(4) Any such interim order may exercise, in respect of the restrictions or information provisions specified in the order, any powers which could be exercised in respect of them by an order under section 2(2) if those restrictions or those information provisions had been found by the Court to be contrary to the public interest.

(5) At any time when any such interim order is in force the Court, on the application of the Director or of any person who is subject to or entitled to the benefit of any restriction or information provision specified in the order, may discharge the order and substitute for it any interim order which could have been made on the original application under this section.

(6) An interim order made under this section in respect of an agreement ceases to have effect on the occurrence of whichever of the following first occurs—

(a) the termination of such period, or the happening of such event, as may be specified for that purpose in the order;

PART I

(b) the discharge of the order by the Court;

(c) a declaration by the Court that the restrictions or information provisions specified in the interim order are not contrary to the public interest;

(d) the final determination by the Court of an application under section 2(2) in respect of that agreement.

Variation of the Court's decisions.

4.—(1) The Court, upon application made in accordance with this section, may—

(a) discharge any previous declaration of the Court in respect of any restriction or information provision, and any order made by the Court in pursuance of that declaration, and

(b) substitute such other declaration, and make such order in pursuance of that declaration,

as appears to the Court to be proper at the time of the hearing of the application.

(2) The provisions of section 10 below or of section 19 below, as the case may be, apply with the necessary modifications in relation to proceedings on an application under this section as they apply in relation to the proceedings mentioned in those sections.

(3) An application under this section may be made by the Director or by any person who is, or was at the time of the previous determination of the Court, subject to or entitled to the benefit of the restriction or information provision in question.

(4) No application shall be made under this section except with the leave of the Court, and such leave shall not be granted except upon prima facie evidence of a material change in the relevant circumstances.

(5) Notwithstanding anything in subsection (4) above, leave to make an application under this section for the discharge of a declaration or order of the Court made before the commencement of the Restrictive Trade Practices Act 1968 (25th November 1968) may, if the applicant proposes to rely on paragraph (h) of section 10(1) below, be granted upon prima facie evidence of the relevance of that paragraph to the application. 1968 c. 66.

(6) This section does not apply in relation to any order made under section 3 above.

The European Communities.

5.—(1) This Act applies to an agreement notwithstanding that it is or may be void by reason of any directly applicable Community provision, or is expressly authorised by or under any such provision; but this subsection is subject to subsection (2) and section 34 below.

PART I

(2) The Court—

(a) may decline or postpone the exercise of its jurisdiction under sections 1 and 2 above, or

(b) may, notwithstanding subsection (2) of section 4 above, exercise its jurisdiction under that section,

if and in so far as it appears to the Court right so to do having regard to the operation of any directly applicable Community provision or to the purpose and effect of any authorisation or exemption granted in relation to such a provision.

PART II

GOODS

Restrictive agreements as to goods.

6.—(1) This Act applies to agreements (whenever made) between two or more persons carrying on business within the United Kingdom in the production or supply of goods, or in the application to goods of any process of manufacture, whether with or without other parties, being agreements under which restrictions are accepted by two or more parties in respect of any of the following matters—

(a) the prices to be charged, quoted or paid for goods supplied, offered or acquired, or for the application of any process of manufacture to goods;

(b) the prices to be recommended or suggested as the prices to be charged or quoted in respect of the resale of goods supplied;

(c) the terms or conditions on or subject to which goods are to be supplied or acquired or any such process is to be applied to goods;

(d) the quantities or descriptions of goods to be produced, supplied or acquired;

(e) the processes of manufacture to be applied to any goods, or the quantities or descriptions of goods to which any such process is to be applied; or

(f) the persons or classes of persons to, for or from whom, or the areas or places in or from which, goods are to be supplied or acquired, or any such process applied.

(2) For the purposes of subsection (1) above it is immaterial—

(a) whether any restrictions accepted by parties to an agreement relate to the same or different matters specified in that subsection, or have the same or different effect in relation to any matter so specified, and

(b) whether the parties accepting any restrictions carry on the same class or different classes of business.

PART II

(3) For the purposes of this Part of this Act an agreement which—

(a) confers privileges or benefits only upon such parties as comply with conditions as to any such matters as are described in subsection (1)(a) to (f) above; or

(b) imposes obligations upon parties who do not comply with such conditions;

shall be treated as an agreement under which restrictions are accepted by each of the parties in respect of those matters.

(4) Without prejudice to subsection (3) above, an obligation on the part of any party to an agreement to make payments calculated by reference—

(a) to the quantity of goods produced or supplied by him, or to which any process of manufacture is applied by him; or

(b) to the quantity of materials acquired or used by him for the purpose of or in the production of any goods or the application of any such process to goods;

being payments calculated, or calculated at an increased rate, in respect of quantities of goods or materials exceeding any quantity specified in or ascertained in accordance with the agreement, shall be treated for the purposes of this Act as a restriction in respect of the quantities of those goods to be produced or supplied, or to which that process is to be applied.

This subsection does not apply to any obligation on the part of any person to make payments to a trade association of which he is a member, if the payments are to consist only of bona fide subscriptions for membership of the association.

Information agreements as to goods.

7.—(1) The Secretary of State may by statutory instrument make an order directing that this Act shall apply to information agreements (whenever made) of any class described in the order; and in this section "information agreement" means an agreement between two or more persons carrying on within the United Kingdom any such business as is described in section 6(1) above, whether with or without other parties, being an agreement under which provision is made for or in relation to the furnishing by two or more parties to each other or to other persons (whether parties or not) of information in respect of any of the following matters—

(a) the prices charged, quoted or paid or to be charged, quoted or paid for goods which have been or are to be supplied, offered or acquired or for the application of any process of manufacture to goods;

PART II

(b) the prices to be recommended or suggested as the prices to be charged or quoted in respect of the resale of goods supplied;

(c) the terms or conditions on or subject to which goods have been or are to be supplied or acquired or any such process has been or is to be applied to goods;

(d) the quantities or descriptions of goods produced, supplied or acquired or to be produced, supplied or acquired;

(e) the costs incurred or to be incurred in producing, supplying or acquiring goods or in applying any such process to goods;

(f) the processes of manufacture which have been or are to be applied to any goods or the quantities or descriptions of goods to which any such process has been or is to be applied;

(g) the persons or classes of persons to or for whom goods have been or are to be supplied, or from or for whom goods have been or are to be acquired, or for whom any such process has been or is to be applied;

(h) the areas or places in or from which goods have been or are to be supplied or acquired or in which any such process has been or is to be applied to goods.

(2) For the purposes of subsection (1) above it is immaterial—

(a) whether any information provisions made by the parties to an agreement relate to the same or different matters specified in that subsection, or have the same or different effect in relation to any matter so specified, and

(b) whether the parties by whom any information is to be furnished carry on the same class or different classes of business.

(3) An order under this section may describe the classes of information agreements to which it applies by reference to one or more of the following matters—

(a) the trade or industry in which the persons to whom the information provision made by the agreement applies are engaged, or the class of business carried on by such persons;

(b) the character of the information provision made by the agreement, or the goods, processes, transactions, areas, places or other matters with respect to which that provision relates;

(c) any other features which appear to the Secretary of State to be expedient.

(4) No order shall be made under this section unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament.

PART II

(5) The Secretary of State shall, before laying before Parliament the draft of an order under this section for applying this Act in relation to information agreements of any class, publish in such manner as he thinks appropriate a notice—

(a) describing the classes of agreements to which the proposed order would apply; and

(b) specifying a period (not being less than 28 days) within which representations with respect to the proposed order may be made to the Secretary of State;

and in settling the draft to be laid before Parliament shall take into consideration any such representations received by him within that period.

Trade associations.

8.—(1) This Act has effect in relation to an agreement made by a trade association as if the agreement were made between all persons who are members of the association or are represented on it by such members and, where any restriction is accepted or information provision made in the agreement on the part of the association, as if the like restriction or the like information provision were accepted or made by each of those persons.

(2) Where—

(a) specific recommendations (whether express or implied) are made by or on behalf of an association to its members, or to any class of its members, and

(b) those recommendations are as to the action to be taken or not to be taken by them in relation to any particular class of goods or process of manufacture in respect of any matters described in section 6(1) above,

this Act has effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (3) below.

(3) The term referred to in subsection (2) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the action to be taken by them in relation to the same class of goods or process of manufacture and in respect of the same matters.

(4) In the case of an order under section 7 above, where—

(a) specific recommendations (whether express or implied) are made by or on behalf of an association to its members, or to any class of its members, and

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CLASSES OF GOODS EXEMPTED FROM THE BAN ON MAINTENANCE OF MINIMUM RESALE PRICES

(Pursuant to the Resale Price Maintenance Act 1976)

Printed books, booklets, brochures, pamphlets and leaflets; all within heading 49.01 of the Brussels Nomenclature;

Children's picture books, other than painting or drawing books, within heading 49.03 of the Brussels Nomenclature;

Maps (including atlases, wall maps and topographical plans) printed, within heading 49.05 of the Brussels Nomenclature;

Goods within the following classes, being products marketed under brand names and excluding products suitable solely for veterinary use:

- Malt extract, whether or not mixed with cod liver oil within headings 19.01 or 21.07 of the Brussels Nomenclature;
- Vitamin preparations and nutritional food additives for human consumption within heading 21.07 of the Brussels Nomenclature;
- Anaesthetics; drugs prepared for use as adjuncts to anaesthesia; ether and diethyl ether solvents; within headings 29.02, 29.08, 29.15, 29.23, 29.24, 29.25, 29.42 or 38.19 of the Brussels Nomenclature;
- Sulphonamide powders within heading 29.36 of the Brussels Nomenclature;
- Enzymes, being preparations of hyaluronidase, trypsin or chymotrypsin within heading 29.40 of the Brussels Nomenclature;
- Antisera; microbial vaccines, toxins, microbial cultures (including ferments but excluding yeasts) and similar products within heading 30.02 of the Brussels Nomenclature;
- Medicaments within heading 30.03 of the Brussels Nomenclature;
- Tulle dressings medicated for human use within heading 30.04 of the Brussels Nomenclature;
- Opacifying preparations for X-ray examinations, within heading 30.05 of the Brussels Nomenclature;
- Contraceptive creams, jellies, pessaries, foaming tablets and oral tablets within heading 38.19 of the Brussels Nomenclature;

Restrictive Trade Practices Act 1976

CHAPTER 34

ARRANGEMENT OF SECTIONS

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2. Restrictions against public interest and consequent Court orders.
3. Interim orders of the Court.
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Restrictive Trade Practices Act 1976

1976 CHAPTER 34

An Act to consolidate the enactments relating to restrictive trade practices. [22nd July, 1976]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

REGISTRATION AND JUDICIAL INVESTIGATION OF RESTRICTIVE AGREEMENTS

Registration of agreements and Court's jurisdiction.

1.—(1) Every agreement to which this Act applies by virtue of—

(*a*) section 6 below (restrictive agreements as to goods);

(*b*) an order under section 7 below (information agreements as to goods);

(*c*) an order under section 11 below (restrictive agreements as to services);

(*d*) an order under section 12 below (information agreements as to services);

is subject to registration under this Act.

(2) The Director General of Fair Trading ("the Director") continues charged with the duty—

(*a*) of compiling and maintaining a register of agreements subject to registration under this Act;

(*b*) of entering or filing in the register such particulars as may be prescribed by regulations made under section 27 below of any such agreement, being—

(i) particulars duly furnished to him under this Act by parties to the agreement; or

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(*b*) those recommendations are as to the furnishing of information in relation to any particular class of goods or process of manufacture in respect of any matters described in subsection (1) of that section,

this Act has effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (5) below.

(5) The term referred to in subsection (4) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the furnishing of information in relation to the same class of goods or process of manufacture and in respect of the same matters.

Provisions to be disregarded under Part II.

9.—(1) In determining whether an agreement is an agreement to which this Act applies by virtue of this Part, where—

(*a*) the parties to the agreement are or include two or more bodies to which this subsection applies, and

(*b*) restrictions or information provisions relating to coal or steel, or relating to both coal and steel, are accepted or made, as the case may be, under the agreement by two or more such bodies, whether the restrictions so accepted or the information provisions so made by those bodies are the same restrictions or different restrictions or are the same information provisions or different information provisions,

no account shall be taken of any such restriction or information provision which is accepted or made under the agreement by a body to which this subsection applies, whether that restriction or information provision is also accepted or made by any other party to the agreement or not.

(2) Subsection (1) above applies to any body which, in accordance with Article 80 of the E.C.S.C. Treaty, constitutes an undertaking for the purposes of Articles 65 and 66 of that Treaty, and in that subsection " coal " and " steel " have the meanings assigned to them respectively by Annex I to that Treaty.

(3) In determining whether an agreement for the supply of goods or for the application of any process of manufacture to goods is an agreement to which this Act applies by virtue of this Part, no account shall be taken of any term which relates exclusively to the goods supplied, or to which the process is applied, in pursuance of the agreement.

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(4) Where any such restrictions as are described in section 6(1) above are accepted or any such information provisions as are described in section 7(1) above are made as between two or more persons by whom, or two or more persons to or for whom, goods are to be supplied, or the process applied, in pursuance of the agreement, subsection (3) above shall not apply to those restrictions or to those information provisions unless accepted or made in pursuance of a previous agreement—

(*a*) in respect of which particulars have been registered under this Act ; or

(*b*) which is exempt from registration by virtue of an order under section 29 (agreements important to the national economy) or section 30 (agreements holding down prices) below.

(5) In determining whether an agreement is an agreement to which this Act applies by virtue of this Part, no account shall be taken of any term by which the parties or any of them agree to comply with or apply, in respect of the production, supply or acquisition of any goods or the application to goods of any process of manufacture—

(*a*) standards of dimension, design, quality or performance, or

(*b*) arrangements as to the provision of information or advice to purchasers, consumers or users,

being either standards or arrangements for the time being approved by the British Standards Institution or standards or arrangements prescribed or adopted by any trade association or other body and for the time being approved by order of the Secretary of State made by statutory instrument.

(6) In determining whether an agreement is an agreement to which this Act applies by virtue of this Part, no account shall be taken of any restriction or information provision which affects or otherwise relates to the workers to be employed or not employed by any person, or as to the remuneration, conditions of employment, hours of work or working conditions of such workers.

In this subsection " worker " means a person who has entered into or works under a contract with an employer whether the contract be by way of manual labour, clerical work, or otherwise, be express or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour.

(7) Any reference in Schedule 3 to this Act to—

(*a*) such restrictions as are described in section 6(1) above, or

Part II

(*b*) such information provisions as are described in section 7(1) above,

shall be construed, in relation to any agreement, as not including references to restrictions or information provisions of which, by virtue of any provision of this section, account cannot be taken in determining whether the agreement is one to which this Act applies by virtue of this Part, or of restrictions accepted or information provisions made by any term of which account cannot be so taken.

Presumption under Part II as to the public interest.

10.—(1) For the purposes of any proceedings before the Court under Part I of this Act, a restriction accepted or information provision made in pursuance of an agreement to which this Act applies by virtue of this Part shall be deemed to be contrary to the public interest unless the Court is satisfied of any one or more of the following circumstances—

(*a*) that the restriction or information provision is reasonably necessary, having regard to the character of the goods to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the consumption, installation or use of those goods ;

(*b*) that the removal of the restriction or information provision would deny to the public as purchasers, consumers or users of any goods other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction or information provision itself or of any arrangements or operations resulting therefrom ;

(*c*) that the restriction or information provision is reasonably necessary to counteract measures taken by any one person not party to the agreement with a view to preventing or restricting competition in or in relation to the trade or business in which the persons party thereto are engaged ;

(*d*) that the restriction or information provision is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of goods to, or the acquisition of goods from, any one person not party thereto who controls a preponderant part of the trade or business of acquiring or supplying such goods, or for the supply of goods to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such goods ;

(*e*) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which a substantial proportion of the trade or industry to which the agreement relates is situated ;

Part II

(*f*) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of the United Kingdom or in relation to the whole business (including export business) of the said trade or industry ;

(*g*) that the restriction or information provision is reasonably required for purposes connected with the maintenance of any other restriction accepted or information provision made by the parties, whether under the same agreement or under any other agreement between them, being a restriction or information provision which is found by the Court not to be contrary to the public interest upon grounds other than those specified in this paragraph, or has been so found in previous proceedings before the Court ; or

(*h*) that the restriction or information provision does not directly or indirectly restrict or discourage competition to any material degree in any relevant trade or industry and is not likely to do so ;

and is further satisfied (in any such case) that the restriction or information provision is not unreasonable having regard to the balance between those circumstances and any detriment to the public or to persons not parties to the agreement (being purchasers, consumers or users of goods produced or sold by such parties, or persons engaged or seeking to become engaged in the trade or business of selling such goods or of producing or selling similar goods) resulting or likely to result from the operation of the restriction or the information provision.

(2) In this section—

(*a*) " purchasers ", " consumers " and " users " include persons purchasing, consuming or using for the purpose or in the course of trade or business or for public purposes ; and

(*b*) references to any one person include references to any two or more persons being interconnected bodies corporate or individuals carrying on business in partnership with each other.

PART IV

(2) An approval given in respect of a society under this section (if it has not been previously withdrawn) expires at the end of the period of two years beginning with the date on which it was given or, if that period is extended (once or more than once) under subsection (3) below, at the end of that period as so extended, or further extended, as the case may be.

(3) The Secretary of State may extend or, if it has already been extended under this subsection, may further extend the period of two years referred to in subsection (2) above by such period, not exceeding two years, as he may specify.

(4) The Secretary of State may at any time withdraw an approval given in respect of a society under this section if it appears to him—

(*a*) that the society has made an agreement which would have been subject to registration under this Act if the approval had not been given, or that such a recommendation as is mentioned in section 8(2) or (4) above has been made by or on behalf of the society; and

(*b*) that the agreement or recommendation has such adverse effects on competition that it should not be precluded from being investigated by the Court under the provisions of this Act.

(5) In relation to a society which is for the time being approved under this section but which, in consequence of an order made under section 11 or section 12 above, is a society to which the provisions of section 16 above would apply if it were not so approved, subsection (4) above has effect as if in that subsection—

(*a*) any reference to an agreement which would have been subject to registration under this Act if the approval had not been given included a reference to an agreement which would in those circumstances have been subject to such registration by virtue of the order; and

(*b*) any reference to such a recommendation as is mentioned in section 8(2) or (4) included a reference to such a recommendation as is mentioned in section 16(3) or (5).

(6) On the expiry or withdrawal of an approval given in respect of a society under this section, the provisions of this Act shall have effect in relation to agreements and recommendations made by the society during the currency of the approval as if the society had not been approved under this section.

(7) In this section—

" industrial and provident society " means a society registered or deemed to be registered under the Industrial and Provident Societies Acts 1965 to 1975 or under the Industrial and Provident Societies Act (Northern Ireland) 1969; 1969 c. 24. (N.I.).

" retail society " means a society which carries on business in the sale by retail of goods for the domestic or personal use of individuals dealing with the society, or in the provision of services for such individuals.

PART IV

Agricultural and forestry associations, and fisheries associations.

33.—(1) Subject to the provisions of this section, this Act does not apply to an agreement between members of an association to which this section applies, or between such an association and any other person, whether a member of the association or not, by reason only of any restriction accepted or treated as accepted, or any information provision made or treated as made, by the association, or by members of the association or of any constituent association, for the purposes of or in connection with—

(*a*) the marketing or preparation for market by the association of produce produced by members of the association on land occcupied by them and used for agriculture or forestry (with or without similar produce not so produced); or

(*b*) the marketing or preparation for market by the association of fish or shellfish caught or taken by members of the association in the course of their business (with or without fish or shellfish not so caught or taken); or

(*c*) the supply by the association to the members of goods required for the production of that produce on that land, or for the catching or taking of fish or shellfish in the course of that business, as the case may be; or

(*d*) the production of produce or the catching or taking of fish or shellfish, as the case may be, by members of the association; or

(*e*) the supply of produce, or the supply of fish or shellfish, as the case may be, by members of the association;

and in determining whether any such agreement is an agreement to which this Act applies, no account shall be taken of any such restriction or information provision.

(2) This section applies—

(*a*) to any association in the case of which the conditions specified in subsection (3) below are satisfied where the association is—

(i) of persons occupying land used for agriculture or forestry or both;

(ii) of persons engaged in the business of catching or taking fish or shellfish;

PART IV

(*b*) to any association of the associations referred to in paragraph (*a*) above which—

(i) satisfies the condition specified in paragraph (*a*) of subsection (3) below; and

(ii) would satisfy the condition specified in paragraph (*c*) of subsection (3) if references in that paragraph to members of the association included references 'o members of constituent associations;

(*c*) to any co-operative association whether or not the conditions specified in paragraphs (*a*) to (*c*) of subsection (3) are satisfied) which has as its object or primary object to assist its members—

(i) in the carrying on of the businesses of agriculture or forestry or both on land occupied by them; or

(ii) in the carrying on of businesses consisting in the catching or taking of fish or shellfish.

(3) The conditions referred to in subsection (2) above are that—

(*a*) the association is or is deemed to be registered under the Industrial and Provident Societies Acts 1965 to 1975 or, being a company within the meaning of the Companies Act 1948, contains in its memorandum or articles of association such provisions as may be prescribed by order of the Ministers with respect to the number of members, numbers of shares held by members, distribution of profits, voting rights or other matters; 1948 c. 38.

(*b*) at least 90 per cent. of the voting power is attached to shares held by persons occupying land used for agriculture or forestry or both, or by persons engaged in the business of catching or taking fish or shellfish, as the case may be; and

(*c*) the only business, or the principal business, carried on by the association is one or more of the following—

(i) the marketing or preparation for market of produce produced by members of the association on land occupied by them and used for agriculture or forestry or both (with or without similar produce not so produced);

(ii) the marketing or preparation for market of fish or shellfish caught or taken by members of the association in the course of their business (with or without fish or shellfish not so caught or taken);

(iii) the supply to the members of goods required for the production of that produce on that land, or for the catching or taking of fish or shellfish in the course of that business, as the case may be;

(iv) in the case of an association of persons occupying land for forestry, the carrying out of forestry operations for the members on that land.

PART IV

References in this subsection to the Industrial and Provident Societies Acts 1965 to 1975, and the Companies Act 1948, include references respectively to the Industrial and Provident Societies Act (Northern Ireland) 1969 and the Companies Act (Northern Ireland) 1960. 1948 c. 38. 1969 c. 24 (N.I.). 1960 c. 22 (N.I.).

(4) The Ministers may by order made by statutory instrument direct that the exemption provided by subsection (1) shall not apply—

(*a*) in relation to agreements of such classes as may be prescribed by the order; or

(*b*) in relation to agreements, or agreements of any class, made by associations of such classes as may be so prescribed;

and any such order may apply to agreements made before as well as after the coming into force of the order.

(5) In this section—

" agriculture " has the meaning given by the Agriculture Act 1947 and the Agriculture (Scotland) Act 1948; 1947 c. 48. 1948 c. 45.

" co-operative association " has the meaning given by section 340(8) and (9) of the Income and Corporation Taxes Act 1970, and references to members of a co-operative association include references to members of any such association which is a member of that association; 1970 c. 10.

" forestry " includes the processing of wood for sale, but not the manufacture of articles of wood;

" the Ministers " means—

(*a*) the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with agriculture in Scotland and Northern Ireland, acting jointly; but

(*b*) in the case of functions exercisable in relation to associations falling within paragraph (*c*) of subsection (2) above and concerned only with forestry in Wales " Secretary of State " shall be substituted for " Minister of Agriculture, Fisheries and Food ";

" produce " means anything (whether live or dead) produced in the course of agriculture or forestry.

(6) Without prejudice to the responsibilities of the Secretaries of State respectively concerned with agriculture in Scotland and

(*b*) its objects or activities include the promotion of the interests of persons engaged in the supply of those services who are either members affected by the order or are persons represented by such members.

(2) The relevant provisions have effect in relation to any agreement made by an association described in subsection (1) above (" services supply association ")—

(*a*) as if the agreement were made between all persons who are members of the associaton or are represented on it by members of the association, and

(*b*) where any restriction is accepted under the agreement by the association, or any information provision is made in the agreement by the association, as if the like restriction were accepted by, or (as the case may be) the like provision were made by, each of the persons who are members of the association or are so represented.

(3) In the case of an order under section 11, where—

(*a*) specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, and

(*b*) those recommendations are as to the action to be taken or not to be taken by them in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(*b*) of that section,

the relevant provisions have effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (4) below.

(4) The term referred to in subsection (3) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the action to be taken by them in relation to the same class of services and in respect of the same matters.

(5) In the case of an order under section 12 above, where—

(*a*) specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, and

(*b*) those recommendations are as to the furnishing of information in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(*b*) of that section,

the relevant provisions have effect in relation to the agreement for the constitution of the association (notwithstanding any provision in the agreement to the contrary) as if that agreement contained the term mentioned in subsection (6) below.

(6) The term referred to in subsection (5) above is one by which each such member, and any person represented on the association by any such member, agrees to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the furnishing of information in relation to the same class of services and in respect of the same matters.

Matters equivalent to restrictions for purposes of s. 11.

17.—(1) For the purposes of any order made under section 11 above, and for the purposes of the relevant provisions, an agreement which—

(*a*) any designated services are made available or supplied comply with conditions as to any such matters as are mentioned in subsection (2) of that section; or

(*b*) imposes obligations upon parties who do not comply with such conditions;

shall be treated as an agreement under which restrictions are accepted by each of the parties in respect of those matters.

(2) Without prejudice to subsection (1) above, an obligation on the part of any party to an agreement to make payments calculated by reference to the extent to which, or the scale on which—

(*a*) any designated services are made available or supplied by him; or

(*b*) any services are obtained by him for the purpose of making available or supplying any designated services;

if the payments are calculated, or calculated at an increased rate, in respect of an extent or scale exceeding an extent or scale specified in or ascertained in accordance with the agreement, shall be treated for the purposes mentioned in subsection (1) as a restriction in respect of the extent or scale of the designated services to be made available or supplied.

This subsection does not apply to any obligation on the part of any person to make payments to a services supply association of which he is a member, if the payments are to consist only of bona fide subscriptions for membership of the association.

Provisions to be disregarded under Part III.

18.—(1) The following provisions of this section have effect for the purpose of determining whether an agreement is one to which this Act applies by virtue of an order under section 11 or section 12 above.

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(2) Subject to subsections (3) and (4) below, no account shall for that purpose be taken of any term which relates exclusively to the services supplied in pursuance of the agreement in question.

(3) Where—

(a) the order referred to in subsection (1) above is an order under section 11, and

(b) any of the restrictions accepted as mentioned in subsection (1)(b) of that section are accepted as between two or more persons by whom, or two or more persons for whom, designated services are to be supplied in pursuance of the agreement,

subsection (2) above does not apply to any term of the agreement which imposes those restrictions unless they are accepted in pursuance of a previous agreement in respect of which particulars have been registered under this Act by virtue of this Part.

(4) Where—

(a) the order referred to in subsection (1) is an order under section 12, and

(b) the term referred to in subsection (2) is one by which provision is made for the furnishing of information as mentioned in subsection (1)(b) of that section by two or more persons by whom, or two or more persons for whom, designated services are to be supplied in pursuance of the agreement,

subsection (2) does not apply to that term unless it is included in the agreement in pursuance of a previous agreement of which particulars have been registered under this Act by virtue of this Part.

(5) For the purpose mentioned in subsection (1) no account shall be taken of any term by which the parties or any of them agree to comply with or apply, in respect of making available, supplying or obtaining any designated services—

(a) any standards (whether being standards of performance in the provision of the services or standards of dimension, design, quality or performance in respect of goods used in providing them) which are either standards approved for the time being by the British Standards Institution or standards prescribed or adopted by an association or other body and for the time being approved by an order made by the Secretary of State by statutory instrument; or

(b) any arrangements either approved by the British Standards Institution, or prescribed or adopted and approved by an order of the Secretary of State, as mentioned in the preceding paragraph, as to the provision of information or advice to persons for whom designated services are supplied or agreed to be supplied.

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(6) For the purpose mentioned in subsection (1) no account shall be taken of any restriction which affects or relates to any of the matters mentioned in section 9(6) above (which relates to employment and to terms and conditions of employment) or of any information provision with respect to any of those matters.

(7) Any reference in Schedule 3 to this Act—

(a) to restrictions accepted in respect of matters specified in an order under section 11 for the purposes of subsection (1)(b) of that section; or

(b) to information provisions made with respect to matters specified in an order under section 12 for the purposes of subsection (1)(b) of that section;

shall be construed, in relation to any agreement, as not including anything of which, by virtue of this section, account cannot be taken for the purpose mentioned in subsection (1).

Presumption under Part III as to the public interest.

19.—(1) For the purposes of any proceedings before the Court under Part I of this Act, a restriction accepted or information provision made in pursuance of an agreement to which this Act applies by virtue of this Part shall be deemed to be contrary to the public interest unless the Court is satisfied of any one or more of the following circumstances—

(a) that the restriction or information provision is reasonably necessary having regard to the character of the services to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the use of those services or in connection with the consumption, installation or use of goods in relation to which those services are supplied;

(b) that the removal of the restriction or information provision would deny to the public as users of any services, or as purchasers, consumers or users of any goods in relation to which any services are supplied, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction or information provision itself or of any arrangements or operations resulting therefrom;

(c) that the restriction or information provision is reasonably necessary to counteract measures taken by any one person not party to the agreement with a view to preventing or restricting competition in or in relation to the trade or business in which the person party thereto are engaged;

(d) that the restriction or information provision is reasonably necessary to enable the persons party to the

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agreement to negotiate fair terms for the supply of services to, or for obtaining services from, any one person not party thereto who controls a preponderant part of the trade or business of supplying such services, or for the supply of services to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such services;

(*e*) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which a substantial proportion of the trade or industry to which the agreement relates is situated;

(*f*) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction or information provision would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of the United Kingdom or in relation to the whole business (including export business) of the said trade or industry;

(*g*) that the restriction or information provision is reasonably required for purposes connected with the maintenance of any other restriction accepted or information provision made by the parties, whether under the same agreement or under any other agreement between them, being a restriction or information provision which is found by the Court not to be contrary to the public interest upon grounds other than those specified in this paragraph, or has been so found in previous proceedings before the Court; or

(*h*) that the restriction or information provision does not directly or indirectly restrict or discourage competition to any material degree in any relevant trade or industry and is not likely to do so;

and is further satisfied (in any such case) that the restriction or information provision is not unreasonable having regard to the balance between those circumstances and any detriment to the public or to persons not parties to the agreement (being users of services supplied by such parties, or persons engaged or seeking to become engaged in any business of supplying such services or of making available or supplying similar services, or being purchasers, consumers or users of goods in relation to which any

such services or similar services are supplied) resulting or likely to result from the operation of the restriction or information provision. PART III

(2) In this section—

(*a*) " purchasers ", " consumers " and " users " include persons purchasing, consuming or using for the purpose or in the course of trade or business or for public purposes; and

(*b*) references to any one person include references to any two or more persons being interconnected bodies corporate or individuals carrying on business in partnership with each other.

20. In this Part of this Act— Interpretation of Part III.

" business " includes a professional practice;

" the relevant provisions " has the meaning given by section 14(6) above;

" scale " (where the reference is to the scale on which any services are, or are to be, made available, supplied or obtained) means scale measured in terms of money or money's worth or in any other manner;

" services "—

(*a*) does not include the application to goods of any process of manufacture or any services rendered to an employer under a contract of employment (that is, a contract of service or of apprenticeship, whether it is express or implied, and, if it is express, whether it is oral or in writing), but, with those exceptions,

(*b*) includes engagements (whether professional or other) which for gain or reward are undertaken and performed for any matter other than the production or supply of goods,

and any reference to the supply of services or to supplying, obtaining or offering services or to making services available shall be construed accordingly.

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GENERAL

Proceedings

21.—(1) The Director may refrain from taking proceedings before the Court— Director's duties as to proceedings for investigation.

(*a*) in respect of an agreement if and for so long as he thinks it appropriate so to do having regard to the

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operation of any directly applicable Community provision and to the purpose and effect of any authorisation or exemption granted in relation to such a provision;

(*b*) where an agreement—

(i) of which particulars are entered or filed in the register pursuant to this Act has been determined (whether by effluxion of time or otherwise); or

(ii) has been so determined in respect of all restrictions accepted or information provisions made under that agreement.

(2) If it appears to the Secretary of State, upon the Director's representation, that the restrictions accepted or information provisions made under an agreement of which particulars are so entered or filed are not of such significance as to call for investigation by the Court, the Secretary of State may give directions discharging the Director from taking proceedings in the Court in respect of that agreement during the continuance in force of the directions.

(3) The Secretary of State may at any time upon the Director's representation withdraw any directions given by him under subsection (2) above if satisfied that there has been a material change of circumstances since the directions were given.

Rules of procedure. 1976 c. 33.

22.—(1) Without prejudice to the generality of section 9(1) of the Restrictive Practices Court Act 1976, rules made under that subsection may provide—

(*a*) for enabling a single application to be made to the Court in respect of a number of related agreements, or separate applications made in respect of related agreements to be heard together;

(*b*) for enabling the Court to determine in a summary way any issue arising in relation to an agreement where it appears to the Court that the relevant provisions of the agreement and the circumstances of the case are substantially similar to the provisions and circumstances considered, in relation to any other agreement, in any previous proceedings before the Court;

(*c*) for enabling the Court to make an order for the payment by any party to proceedings under sections 1, 2 and 4 above of costs in respect of proceedings in which he is guilty of unreasonable delay, or in respect of any improper, vexatious, prolix or unnecessary proceedings or any other unreasonable conduct on his part.

(2) The Court—

(*a*) does not have power to order the payment of costs by any party to proceedings under sections 1, 2 and

4 above except so far as may be provided by rules made in pursuance of subsection (1)(*c*) above; but PART IV

(*b*) without prejudice to section 9(3) of the Restrictive Practices Court Act 1976, the Court has power in exercise of its jurisdiction under sections 26, 35 and 37 below to order the payment of costs by any party to proceedings before the Court. 1976 c. 33.

Registration

23.—(1) The register for the purposes of this Act shall be kept by the Director— General provisions as to the register.

(*a*) at such premises within the United Kingdom; and

(*b*) in such form;

as he may determine.

(2) The Director shall cause notice of—

(*a*) any declaration made under section 1(3) above;

(*b*) any order made under section 2 above;

to be entered in the register.

(3) Regulations made under section 27 below shall provide for the maintenance of a special section of the register, and for the entry or filing in that section of such particulars as the Secretary of State may direct, being—

(*a*) particulars containing information the publication of which would in the Secretary of State's opinion be contrary to the public interest;

(*b*) particulars containing information as to any secret process of manufacture (or, in relation to Part III of this Act, any secret process) or as to the presence, absence or situation of any mineral or other deposits or as to any other similar matter, being information the publication of which in the Secretary of State's opinion would substantially damage the legitimate business interests of any person.

(4) The register, other than the special section, shall be open to public inspection during such hours and subject to payment of such fee as may be prescribed by regulations made under section 27.

(5) Any person may, upon payment of such fee as may be prescribed by regulations made under section 27, require the Director to supply to him a copy of or extract from any particulars entered or filed in the register, other than the special section, certified by the Director to be a true copy or extract.

(6) No process for compelling the production of the register or of any other document kept by the Director shall issue from

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any court except with the leave of the court, and any such process if issued shall bear a statement that it is issued with the leave of the court.

(7) A copy of or extract from any document entered or filed in the register, certified under the hand of the Director or an officer authorised to act on his behalf (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original.

Particulars and time for registration.

24.—(1) In respect of every agreement which is subject to registration under this Act the following particulars shall be furnished to the Director—

(*a*) the names and addresses of the persons who are parties to the agreement; and

(*b*) the whole of the terms of the agreement, whether or not relating to any such restriction or information provision as is described in this Act.

(2) The additional provisions contained in Schedule 2 to this Act have effect as to the particulars to be furnished in respect of—

(*a*) an agreement which is subject to registration under this Act; and

(*b*) the variation or determination of such an agreement;

and such particulars shall in the cases specified in the first column of the Table in paragraph 5(1) of that Schedule be furnished within the time specified in the second column of that Table.

(3) In relation to an agreement to which this Act—

(*a*) has effect by virtue of section 8 above as if it were an agreement between members of a trade association, or persons represented on the trade association by such members;

(*b*) has effect by virtue of section 16 above as if it were an agreement between members of a services supply association, or persons represented on the services supply association by such members;

references in this section and Schedule 2 to the parties to the agreement include references to those members or persons, and in relation to an agreement in which a term is implied by virtue of section 8(2) or (4) above, or section 16(3) or (5) above, as the case may be, the reference in this section to the terms of the agreement includes a reference to that term, and references in this section and Schedule 2 to an agreement shall be construed accordingly.

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Particulars of export agreements.

25. Section 24 above has effect in relation to an agreement which is or becomes one to which this Act would apply but for—

(*a*) paragraph 6(1) of Schedule 3 to this Act, where the agreement relates to exports from the United Kingdom, or

(*b*) paragraph 9(1) of that Schedule,

as if that agreement were subject to registration under this Act.

Court's power to rectify the register, etc.

26.—(1) The Court may, on the application of any person aggrieved, order the register to be rectified by the variation or removal of particulars included in the register in respect of any agreement.

(2) The Court may, on the application of—

(*a*) any person party to an agreement; or

(*b*) the Director, in respect of an agreement of which particulars have been furnished to him under this Act;

declare whether or not the agreement is one to which this Act applies, and if so whether or not it is subject to registration under this Act.

(3) Where application is made under subsection (2) above by a party to an agreement before the expiry of the time within which, if the agreement is subject to registration under this Act, particulars are required to be furnished under section 24 above, then—

(*a*) if particulars of the agreement have not been so furnished before the commencement of the proceedings, that time shall be extended by a time equal to the time during which the proceedings and any appeal therein are pending, and such further time, if any, as the Court may direct; and

(*b*) if particulars have been so furnished, the Director shall not enter or file particulars of the agreement in the register during the time during which the proceedings and any appeal therein are pending.

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(4) Notice of an application to the Court under this section shall be served, in accordance with rules of court—

(*a*) in the case of an application by a person other than the Director, on the Director;

(*b*) in the case of an application by the Director, on the parties to the agreement or such of them as may be prescribed or determined by or under the rules;

and a party on whom notice is so served shall be entitled, in accordance with such rules, to appear and be heard on the application.

Regulations for registration.

27.—(1) Subject to the provisions of this Act, the Director may make regulations for the purposes of registration under this Act and for purposes connected therewith, and in particular, but without prejudice to the generality of the foregoing provision—

(*a*) for requiring that—

(i) in respect of an agreement he is furnished with information as to any steps taken, or decision given, under or for the purpose of any directly applicable Community provision affecting the agreement; and

(ii) the information so given or such part, if any of it, as may be provided by the regulations is included in the particulars to be entered or filed in the register under section 1(2)(*b*) above;

(*b*) for regulating the procedure to be followed in connection with the furnishing of particulars, information and documents under section 24 above and section 36 below;

(*c*) for excluding from the particulars to be furnished or from the particulars to be entered in the register under this Act—

(i) such details as to parties or other persons, prices (or, in relation to Part III of this Act, charges) terms or other matters as are material for the purpose only of defining the particular application of continuing restrictions accepted or information provisions made under agreements of which particulars are so entered;

(ii) particulars of such variations as may be specified in the regulations, being variations the registration of which is in the Director's opinion unnecessary for the purposes of this Act;

(*d*) for prescribing the form of any notice, certificate or other document to be given, made or furnished under the provisions of this Act;

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(*e*) for regulating the inspection of the register or of any document kept by the Director;

(*f*) for prescribing anything authorised or required by this Act to be prescribed by regulations made under this section.

(2) Nothing in regulations made by virtue of subsection (1)(*c*) above shall affect the Director's power under section 36(3) to require the furnishing of further documents or information by any such person as is mentioned in section 36(3).

(3) Any regulations made under this section prescribing a fee for inspection of the register or for the supply of copies of or extracts from particulars entered or filed in the register, shall be made with the approval of the Treasury.

(4) The Director's power to make regulations under this section is exercisable by statutory instrument, and the Statutory Instruments Act 1946 shall apply to such regulations as it applies to regulations made by a Minister of the Crown within the meaning of that Act. 1946 c. 36.

Exemptions

Excepted agreements.

28. This Act does not apply to the agreements described in Schedule 3 to this Act.

Agreements important to the national economy.

29.—(1) If it appears to the Secretary of State, on consideration of an agreement proposed to be made by any parties, that the conditions set out in subsection (2) below are complied with in respect of the proposed agreement, he may, by order made on or before the conclusion of the agreement, approve the agreement for the purposes of this section; and any agreement so approved shall be exempt from registration under this Act during the continuance in force of the order.

(2) The conditions for the making of an order under subsection (1) above in respect of an agreement (in this section referred to as the conditions of exemption) are—

(*a*) that the agreement is calculated to promote the carrying out of an industrial or commercial project or scheme of substantial importance to the national economy;

(*b*) that its object or main object is to promote efficiency in a trade or industry or to create or improve productive capacity in an industry;

(*c*) that the object cannot be achieved or achieved within a reasonable time except by means of the agreement or of an agreement for similar purposes;

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(d) that no restrictions are accepted or information provisions made under the agreement other than such as are reasonably necessary to achieve that object; and

(e) that the agreement is on balance expedient in the national interest.

(3) In considering the national interest for the purposes of subsection (2)(e) above the Secretary of State shall take into account any effects which an agreement is likely to have on persons not parties thereto as purchasers, consumers or users of any relevant goods or, in relation to an agreement to which this Act applies by virtue of an order under section 11 or section 12 above, as users of any relevant services.

(4) An order under this section shall continue in force for such period as may be specified therein, which may be extended by subsequent order of the Secretary of State: but the period so specified or extended shall not exceed the period which appears to the Secretary of State sufficient for the purposes for which the order was made.

(5) An order under this section approving an agreement may be revoked by order of the Secretary of State at any time after the expiry of one year from the day on which the first-mentioned order was made if it appears to him—

(a) that the object or main object of the agreement has not been or is not likely to be achieved, or that any other condition or exemption is no longer satisfied in respect of the agreement; or

(b) that the agreement is used for purposes other than those for which it was approved;

and may be so revoked at any time if the Secretary of State becomes aware of circumstances by reason of which, if known to him at the material time, the agreement would not have been approved.

The Secretary of State shall not make an order by virtue of paragraph (a) or paragraph (b) of this subsection unless he has given to each of the parties at least 28 days' notice of his intention to make the order.

(6) The Secretary of State shall—

(a) lay before each House of Parliament a copy of any order made under this section and of the agreement to which the order relates; and

(b) make available for public inspection a copy of any such agreement.

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(7) Subsection (6) above shall not apply—

(a) to an agreement which varies an agreement previously approved under this section; or

(b) to an order approving such an agreement;

if in the Secretary of State's opinion the variation does not substantially affect the operation of restrictions accepted or information provisions made under the agreement previously approved.

Agreements holding down prices.

30.—(1) A competent authority may by order approve for the purposes of this section any agreement made at the request of the competent authority, or any term included at their request in any agreement, being an agreement or term which relates exclusively—

(a) to the prices to be charged in connection with transactions of any description and is designed either to prevent or restrict increases or to secure reductions in those prices; or

(b) in relation to an agreement to which this Act applies by virtue of an order under section 11 or section 12 above, to the charges to be made in connection with transactions of any description and is designed either to prevent or restrict increases or to secure reductions in those charges.

(2) Where an agreement is approved by order under this section, the agreement shall be exempt from registration under this Act during the continuance in force of the order; and where a term of an agreement is so approved, that term, and any restrictions accepted or information provisions made thereunder, shall during the continuance in force of the order be disregarded for all purposes in determining whether this Act applies to the agreement.

(3) An order under this section shall continue in force for such period as may be specified therein, which may be extended by subsequent order of the competent authority: but the period so specified shall not exceed two years, and shall not be extended by more than two years at a time.

(4) An order under this section may at any time be revoked by order of the competent authority if it appears to that authority that the relevant agreement or term is used for purposes other than those for which it was approved.

(5) A competent authority shall make available for public inspection a copy of any agreement or term of an agreement approved by order under this section.

(6) The competent authorities for the purposes of this section are the Secretary of State, and the Minister of Agriculture, Fisheries and Food.

Supplementary provisions for ss. 29 and 30.

31.—(1) Sections 29 and 30 above apply, with the necessary modifications, in relation to any recommendation made by or on behalf of a trade association or a services supply association as they apply in relation to an agreement; and where any such recommendation is approved by order under either of those sections—

(*a*) subsection (2) or subsection (4) of section 8 above;

(*b*) subsection (3) or subsection (5) of section 16 above;

shall not apply in relation to the recommendation during the continuance in force of the order.

(2) In the case of an order under section 29 approving a recommendation by or on behalf of a trade association or of a services supply association, as the case may be—

(*a*) the requirement of subsection (5) of that section as to the giving of notice of intention to revoke the order shall be treated as a requirement to give such notice as is there mentioned to the association; and

(*b*) any notice under that subsection which is required to be given to a trade association or to a services supply association or to each of the members of such an association shall be treated as duly so given if it is given either—

(i) to the association; or

(ii) to the secretary, manager or other similar officer of the association.

(3) An order under section 29 or section 30 made before the conclusion of the agreement or issue of the recommendation to which it relates may be made subject to conditions—

(*a*) as to the time within which the agreement is to be concluded or the recommendation issued; and

(*b*) as to the furnishing of copies of the agreement or recommendation to the Secretary of State or other competent authority.

(4) There may be omitted from the copies of any agreement, term of an agreement or recommendation to be laid before Parliament under section 29, and to be made available for public inspection under that section or section 30, the particulars mentioned in subsection (5) below.

(5) The particulars referred to in subsection (4) above are such as would, in the opinion of the Secretary of State or other competent authority, fall to be entered in the special section of the register referred to in section 23(3) above if the relevant agreement were subject to registration under this Act.

(6) If any agreement, term of an agreement or recommendation approved by order under secton 29 or section 30 is subsequently varied, the order shall cease to have effect unless the variation is also approved by order under section 29 or section 30, as the case may be; and a variation may be so approved if (and only if) the agreement, term or recommendation could be so approved as varied.

(7) The approval by order under section 29 or section 30 of an agreement or recommendation made by or on behalf of a trade association or a services supply association shall not be affected by any change in the persons who are members of the association or are represented on the association by such members, but without prejudice to the power of the Secretary of State or other competent authority to revoke the order under section 29 or section 30.

(8) No order made by the Court in proceedings under this Act for restraining any person from making an agreement or recommendation, and no corresponding undertaking given to the Court in such proceedings, shall be construed as extending to an agreement or recommendation which is exempt from registration by virtue of an order under section 29 or section 30.

(9) In any proceedings before the Court under sections 1 and 2 above in respect of an agreement, the fact that the agreement has or has not at any time been the subject of an order under section 29 or section 30 shall not be treated as relevant to the question whether any restrictions accepted or information provisions made under the agreement are contrary to the public interest.

Wholesale co-operative societies.

32.—(1) The Secretary of State may approve under this section any industrial and provident society which in his opinion fulfils the following conditions—

(*a*) that it carries on business in the production or supply of goods or in the supply of services or in the application to goods of any process of manufacture;

(*b*) that its shares are wholly or mainly held by industrial and provident societies; and

(*c*) that those societies are retail societies or societies whose shares are wholly or mainly held by retail societies;

and a society which is for the time being so approved shall not be treated as a trade association or a services supply association.

PART III

SERVICES

Restrictive agreements as to services.

11.—(1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as "services brought under control by the order") and direct by the order that this Act shall apply to agreements (whenever made) which—

(*a*) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties ; and

(*b*) are agreements under which restrictions, in respect of matters specified in the order for the purposes of this paragraph, are accepted by two or more parties.

(2) The matters which may be specified in such an order for the purposes of subsection (1)(*b*) above are any of the following—

(*a*) the charges to be made, quoted or paid for designated services supplied, offered or obtained ;

(*b*) the terms or conditions on or subject to which designated services are to be supplied or obtained ;

(*c*) the extent (if any) to which, or the scale (if any) on which, designated services are to be made available, supplied or obtained ;

(*d*) the form or manner in which designated services are to be made available, supplied or obtained ;

(*e*) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services are to be made available or supplied or are to be obtained.

Information agreements as to services.

12.—(1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as "services brought under control by the order") and direct by the order that this Act shall apply to agreements (whenever made) which—

(*a*) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties ; and

(*b*) are agreements under which provision is made for or in relation to the furnishing by two or more parties to each other or to other persons (whether parties or not) of information with respect to matters specified in the order for the purposes of this paragraph.

(2) The matters which may be specified in such an order for the purposes of subsection (1)(*b*) above are any of the following—

(*a*) the charges made, quoted or paid or to be made, quoted or paid for designated services which have been or are to be supplied, offered or obtained ;

(*b*) the terms or conditions on or subject to which designated services have been or are to be supplied or obtained ;

(*c*) the extent (if any) to which, or the scale (if any) on which, designated services have been or are to be made available, supplied or obtained ;

(*d*) the form or manner in which designated services have been or are to be made available, supplied or obtained ;

(*e*) the costs incurred or to be incurred in making available, supplying or obtaining designated services ;

(*f*) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services have been or are to be made available or supplied or have been or are to be obtained.

Designated services.

13.—(1) In relation to any order made under section 11 or section 12 above, "designated services" in this Act means services of any class described in the order as being designated services.

(2) Subject to subsection (3) below, a class of services described in any such order as being designated services may consist wholly or partly of services brought under control by the order or wholly or partly of other services, and may be described so as to consist—

(*a*) of services of one or more descriptions specified in that behalf in the order, or

(*b*) of all services except services of one or more descriptions so specified,

and different classes of services may be so described in relation to different matters specified in the order for the purposes of section 11(1)(*b*) or section 12(1)(*b*) above, as the case may be.

(3) A class of services described in such an order as being designated services shall not include any of the services specified in Schedule 1 to this Act.

Supplementary provisions as to orders under Part III.

14.—(1) A class of services described in an order under section 11 or section 12 above as being the services brought under control by the order may consist—

(*a*) of services of one or more descriptions specified in that behalf in the order ; or

(*b*) of all services except services of one or more descriptions so specified ; or

(*c*) of all services without exception.

(2) An order under section 11 or section 12 may limit the operation of the order to agreements fulfilling such conditions (in addition to those mentioned in section 11 or section 12, as the case may be) as may be specified in the order.

(3) In particular, but without prejudice to the generality of subsection (2) above, an order under section 12 may limit the operation of the order to agreements under which the provision for the furnishing of information (as mentioned in subsection (1)(*b*) of that section) is provision of a kind specified in the order or provides for the furnishing of information of a kind so specified.

(4) Subject to subsection (2) above—

(*a*) for the purposes of any order under section 11 it is immaterial whether any restrictions accepted by parties to an agreement relate to the same or to different matters specified in the order for the purposes of subsection (1)(*b*) of that section, or have the same or a different effect in relation to any matter so specified, and

(*b*) for the purposes of any order under section 12 it is immaterial whether any information provision made by an agreement relates to the same or to different matters specified in the order for the purposes of subsection (1)(*b*) of that section,

and it is immaterial for those purposes whether the parties accepting any restrictions, or the parties by whom any information is to be furnished, as the case may be, carry on the same class or different classes of business.

(5) Where, at a time when an order under section 11 or section 12 (in this subsection referred to as " the earlier order ") is in force, another order (in this subsection referred to as " the subsequent order ") is made under the same section, the subsequent order may provide that—

(*a*) for the purposes of the earlier order ; or

(*b*) for the purposes of the subsequent order ; or

(*c*) for the purposes of both orders ;

the condition specified in section 11(1)(*a*) or in section 12(1)(*a*), as the case may be, shall be treated as fulfilled in relation to an agreement if it is an agreement to which the parties are or include one person carrying on business in the United Kingdom in the supply of services brought under control by the earlier order and one person carrying on business within the United Kingdom in the supply of services brought under control by the subsequent order.

This subsection has effect without prejudice to any power to vary any order made under section 11 or section 12.

(6) In the following provisions of this Part of this Act " the relevant provisions ", in relation to an order under section 11 or section 12 above, means the provisions of this Act as they have effect in relation to that order.

Procedure as to orders under Part III.

15.—(1) No order shall be made under section 11 or section 12 above unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(2) Before laying before Parliament a draft of any such order, the Secretary of State shall publish in such manner as he thinks appropriate a notice—

(*a*) describing the classes of services which, if the order is made, will be services brought under control by the order and will be designated services in relation to the order respectively ;

(*b*) indicating the nature of any limitation to be imposed by the order under section 14(2) or (3) above ; and

(*c*) specifying a period (not being less than 28 days) within which representations with respect to the proposed order may be made to the Secretary of State.

(3) In settling the draft to be laid before Parliament the Secretary of State shall take into consideration any representations with respect to the proposed order which may be received by him within the period specified in the notice in accordance with subsection (2)(*c*) above.

Services supply associations.

16.—(1) For the purposes of any order made under section 11 or section 12 above, and for the purposes of the relevant provisions, subsections (2) to (6) below have effect in relation to any association (whether incorporated or not) if—

(*a*) its membership consists wholly or mainly of persons (in this subsection referred to as " members affected by the order ") who are either engaged in the supply of services brought under control by the order or are employed by or represent persons so engaged ; and

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Northern Ireland, the discharge of any functions as functions exercisable by virtue of subsection (5) above by the Secretary of State shall belong to the Secretary of State for Wales; but nothing in this subsection shall be taken—

(*a*) to prejudice any powers exercisable in relation to the functions of Ministers of the Crown and government departments by virtue of Her Majesty's prerogative, or

(*b*) to affect the power of any Secretary of State to perform any functions of that office in place of the Secretary of State entrusted with the discharge of those functions.

Authorisations for purposes of E.C.S.C. Treaty.

34. An agreement is exempt from registration under this Act so long as there is in force in relation to that agreement an authorisation given for the purpose of any provision of the E.C.S.C. Treaty relating to restrictive trade practices.

Enforcement

Failure to register.

35.—(1) If particulars of an agreement which is subject to registration under this Act are not duly furnished within the time required by section 24 above, or within such further time as the Director may, upon application made within that time, allow—

(*a*) the agreement is void in respect of all restrictions accepted or information provisions made thereunder; and

(*b*) it is unlawful for any person party to the agreement who carries on business within the United Kingdom to give effect to, or enforce or purport to enforce, the agreement in respect of any such restrictions or information provisions.

(2) No criminal proceedings lie against any person on account of a contravention of subsection (1)(*b*) above; but the obligation to comply with that paragraph is a duty owed to any person who may be affected by a contravention of it and any breach of that duty is actionable accordingly subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) Without prejudice to any right which any person may have by virtue of subsection (2) above to bring civil proceedings in respect of an agreement affected by subsection (1)(*b*), the Court may, upon the Director's application, make such order as appears to the Court to be proper for restraining all or any of those mentioned in subsection (4) below from giving effect to, or enforcing or purporting to enforce—

(*a*) the agreement in respect of any restrictions or information provisions;

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(*b*) other agreements in contravention of subsection (1) above;

and nothing in subsection (2) prevents the enforcement of any such order by appropriate proceedings.

(4) Those who may be restrained by an order of the Court under subsection (3) above are—

(*a*) any person party to the agreement who carries on business within the United Kingdom;

(*b*) a trade association or a services supply association of which any such person is a member; or

(*c*) any person acting on behalf of any such association.

(5) Where an order is made under subsection (3) against any party to an agreement and that party is a member of a trade association or a services supply association, the order may include provisions for restraining the association, and any person acting on its behalf, from procuring or assisting that party to do anything which would be a contravention of the order in its application to him.

(6) In relation to an agreement for the constitution of a trade association or a services supply association which is subject to registration in consequence of the making of a recommendation to which—

(*a*) subsection (2) or subsection (4) of section 8 above;

(*b*) subsection (3) or subsection (5) of section 16 above;

applies, the Court's power under subsection (3) includes power to make such order as appears to the Court to be proper for restraining the association or any person acting on its behalf from making other such recommendations

(7) Where any issue, whether of law or of fact or partly of law and partly of fact, has been finally determined on an application under subsection (3) above in respect of an agreement, then in any proceedings brought in respect of that agreement by virtue of subsection (2) above in which the same issue arises—

(*a*) any finding of fact relevant to that issue which was made on the application shall be evidence (and in Scotland sufficient evidence) of that fact; and

(*b*) any decision on a question of law relevant to that issue which was given on the application shall be binding on the court in so far as the material facts found in those proceedings are the same as were found on the application.

(8) Where an agreement which is subject to registration under this Act is varied so as to extend or add to the restrictions

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accepted or information provisions made under the agreement, the provisions of this section apply, with the necessary modifications, in relation to the variation as they apply in relation to an original agreement which is subject to registration under this Act.

Director's power to obtain information.

36.—(1) If the Director has reasonable cause to believe that a person being—

(*a*) a person carrying on within the United Kingdom any such business as is described in section 6(1) above; or

(*b*) a trade association, the members of which consist of or include persons carrying on business as so described, or representatives of such persons; or

(*c*) a person carrying on within the United Kingdom any business of supplying services brought under control by an order under section 11 or section 12 above; or

(*d*) an association which, in relation to such an order, is a services supply association;

is or may be party to an agreement subject to registration under this Act, he may give to that person such notice as is described in subsection (2) below.

(2) The notice referred to in subsection (1) above may require any person mentioned in paragraphs (*a*) to (*d*) of that subsection to notify the Director (within such time as may be specified in the notice) whether that person is party to any agreement relating to—

(*a*) any such matters as are described in paragraphs (*a*) to (*f*) of section 6(1); or

(*b*) any such matters as are described in paragraphs (*a*) to (*h*) of section 7(1) above; or

(*c*) matters specified in the relevant order for the purposes of section 11(1)(*b*) above; or

(*d*) matters specified in the relevant order for the purposes of section 12(1)(*b*) above;

and if so to furnish to the Director such particulars of the agreement as may be specified in the notice.

(3) The Director may give notice to any person by whom particulars are furnished under section 24 above in respect of an agreement, or to any other person being party to the agreement, requiring him to furnish such further documents or information in his possession or control as the Director considers expedient for the purposes of or in connection with the registration of the agreement.

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(4) In the case of—

(*a*) any such trade association as is mentioned in subsection (1)(*b*) above; or

(*b*) any such services supply association as is mentioned in subsection (1)(*d*) above;

a notice may be given under subsection (1) by the Director either to the association or to the secretary, manager or other similar officer of the association.

For the purposes of this section any such trade association or services supply association shall be treated as party to any agreement to which members of the association, or persons represented on the association by such members, are parties as such.

(5) In subsection (1) the reference to an agreement subject to registration under this Act shall, in relation to Part II, be construed as including a reference to any agreement which—

(*a*) relates to exports from the United Kingdom; and

(*b*) would, but for paragraph 6(1) of Schedule 3 to this Act, be an agreement subject to registration under this Act.

(6) In subsection (1) the reference to an agreement subject to registration under this Act shall, in relation to Part III, be construed as including a reference to any agreement which would, but for paragraph 9(1) of Schedule 3, be an agreement subject to registration under this Act.

Court's power to order examination on oath.

37.—(1) In any case in which the Director has given notice to any person under section 36 above the Court may on the Director's application order that person to attend and be examined on oath in accordance with this section concerning the matters in respect of which the Director has given notice to him under that section.

(2) Where an order is made under this section for the attendance and examination of any person—

(*a*) the Director shall take part in the examination and for that purpose may be represented by solicitor or counsel;

(*b*) the person examined shall answer all such questions as the Court may put or allow to be put to him, but may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him;

(*c*) notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the

Know-how about goods

3. This Act does not apply to an agreement between two persons (neither of whom is a trade association) for the exchange of information relating to the operation of processes of manufacture (whether patented or not) where—

(*a*) no other person is party to the agreement ; and

(*b*) no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made under the agreement except in respect of the descriptions of goods to be produced by those processes or to which those processes are to be applied.

Trade marks

1938 c. 22

4.—(1) This Act does not apply to an agreement made in accordance with regulations approved by the Secretary of State under section 37 of the Trade Marks Act 1938 (which makes provision as to certification trade marks) authorising the use of such a trade mark, being an agreement under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made other than restrictions or information provisions permitted by those regulations.

(2) This Act does not apply to an agreement—

(*a*) between the registered proprietor of a trade mark (other than a certification trade mark) and a person authorised by the agreement to use the mark subject to registration as a registered user under section 28 of the Trade Marks Act 1938 (which makes provision as to registered users) ; and

(*b*) under which no such restrictions as are described in section 6(1) are accepted or no such information provisions as are described in section 7(1) are made except in respect of—

(i) the descriptions of goods bearing the mark which are to be produced or supplied ; or

(ii) the processes of manufacture to be applied to such goods or to goods to which the mark is to be applied.

Patents and registered designs

5.—(1) Subject to sub-paragraphs (4) to (8) below, this Act does not apply—

(*a*) to a licence granted by the proprietor or a licensee of a patent or registered design, or by a person who has applied for a patent or for the registration of a design ;

(*b*) to an assignment of a patent or registered design, or of the right to apply for a patent or for the registration of a design ; or

(*c*) to an agreement for such a licence or assignment ;

being a licence, assignment or agreement such as is described in sub-paragraph (2) or sub-paragraph (3) below.

(2) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part II of this Act one under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made except in respect of—

(*a*) the invention to which the patent or application for a patent relates, or articles made by the use of that invention ; or

(*b*) articles in respect of which the design is or is proposed to be registered and to which it is applied ;

as the case may be.

(3) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part III of this Act one under which—

(*a*) in the case of an order under section 11 above, no restrictions in respect of matters specified in the order for the purposes of subsection (1)(*b*) of that section are accepted except in respect of the invention to which the patent or application for a patent relates ; or

(*b*) in the case of an order under section 12 above, no information provision with respect to matters specified in the order for the purposes of subsection (1)(*b*) of that section is made except in respect of that invention.

(4) No licence, assignment or agreement is by virtue of sub-paragraph (1) above precluded from being an agreement to which this Act applies if—

(*a*) it is a patent or design pooling agreement ; or

(*b*) it is a licence, assignment or agreement granted or made in pursuance (directly or indirectly) of a patent or design pooling agreement.

(5) In this paragraph, subject to sub-paragraph (8) below, " patent or design pooling agreement " means an agreement—

(*a*) to which the parties are or include at least three persons (in this and the following sub-paragraph the " principal parties ") each of whom has an interest in one or more patents or registered designs, and

(*b*) by which each of the principal parties agrees, in respect of patents or registered designs in which he has an interest, or in respect of patents or registered designs in which he has or may during the currency of the agreement acquire an interest, to grant such an interest as is mentioned in sub-paragraph (6) below.

(6) The grant referred to in sub-paragraph (5) above is—

(*a*) of an interest in one or more such patents or registered designs to one or more of the other principal parties, or to one or more of those parties and to other persons ; or

(*b*) of an interest in at least one such patent or registered design to a third person for the purpose of enabling that person to grant an interest in it to one or more of the other principal parties, or to one or more of those parties and to other persons ;

and " interest ", in relation to a patent or registered design, means an interest as proprietor or licensee of the patent or registered design or an interest consisting of such rights as a person has by virtue of having applied for a patent or for the registration of a design or by virtue of having acquired the right to apply for a patent or for the registration of a design.

(7) For the purposes of sub-paragraphs (4) to (6) above, a licence, assignment or agreement—

(*a*) shall be taken to be granted or made directly in pursuance of a patent or design pooling agreement if it is granted or made in pursuance of provisions of that agreement such as are mentioned in sub-paragraph (6)(*a*) ; and

(*b*) shall be taken to be granted or made indirectly in pursuance of a patent or design pooling agreement if it is granted or made by a third person to whom an interest has been granted in pursuance of provisions of that agreement such as are mentioned in sub-paragraph (6)(*b*).

(8) In relation to any interest held by or granted to any two or more persons jointly, sub-paragraphs (5) and (6) apply as if those persons were one person by whom the interest is held or to whom it is granted, and accordingly those persons shall be treated for the purposes of those sub-paragraphs as together constituting one party.

(9) In this paragraph, references—

(*a*) to an assignment mean, in relation to Scotland, an assignation ;

(*b*) to the registration of designs have effect only in relation to Part II.

Agreements as to goods with overseas operation

6.—(1) This Act does not apply to an agreement in the case of which all such restrictions as are described in section 6(1) above, or all such information provisions as are described in section 7(1) above, relate exclusively—

(*a*) to the supply of goods by export from the United Kingdom ;

(*b*) to the production of goods, or the application of any process of manufacture to goods, outside the United Kingdom ;

(*c*) to the acquisition of goods to be delivered outside the United Kingdom and not imported into the United Kingdom for entry for home use ; or

(*d*) to the supply of goods to be delivered outside the United Kingdom otherwise than by export from the United Kingdom ;

and subsections (2) and (4) of section 8 above do not apply in relation to recommendations relating exclusively to those matters.

(2) The Court's jurisdiction mentioned in section 1(3) above does not extend to restrictions or to information provisions in respect of

matters described in paragraphs (*b*) to (*d*) of sub-paragraph (1) above.

Exclusive supply of services

7. This Act does not apply to an agreement to which there are no parties other than one person who agrees to supply services and another person for whom they are to be supplied, where neither of those persons is, in relation to any order under Part III of this Act, a services supply association and, except in respect of the supply of services of the same description to, or obtaining services of the same description from, other persons—

(*a*) in the case of an order under section 11 above, no restrictions are accepted under the agreement by those parties in respect of matters specified in the order for the purposes of subsection (1)(*b*) of that section ; or

(*b*) in the case of an order under section 12 above, no information provision is made under the agreement with respect to matters specified in the order for the purposes of subsection (1)(*b*) of that section.

Know-how about services

8. This Act does not apply to an agreement between two persons (neither of whom is a services supply association) for the exchange of information relating to techniques or processes to be applied in the provision of designated services where—

(*a*) no other person is party to the agreement ; and

(*b*) all such restrictions as are mentioned in section 11(1)(*b*) above which are accepted under the agreement relate exclusively to the form or manner in which services incorporating those techniques or processes are to be made available or supplied.

Agreements for supplying services with overseas operation

9.—(1) This Act does not apply to an agreement where—

(*a*) in the case of an order under section 11 above, all such restrictions as are accepted under the agreement in respect of matters specified in the order for the purposes of subsection (1)(*b*) of that section (or, in a case falling within section 16(3) above, all the recommendations referred to in that subsection) relate to the supply of services outside the United Kingdom or to the supply of services to persons or in relation to property (of any description, whether movable or immovable) outside the United Kingdom ; or

(*b*) in the case of an order under section 12 above, all such provision as is made under the agreement for or in relation to the furnishing of information with respect to matters specified in the order for the purposes of subsection (1)(*b*) of that section (or, in a case falling within section 16(5), every such recommendation as is referred to in that subsection) relates to the supply of services as mentioned in paragraph (*a*) above.

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(2) The Court's jurisdiction mentioned in section 1(3) above does not extend to restrictions or to information provisions—

(*a*) in respect of the supply of services outside the United Kingdom ; or

(*b*) in respect of the supply of services to persons or in relation to property (of any description, whether movable or immovable) outside the United Kingdom.

Section 44.

SCHEDULE 4

Transitional Provisions and Savings

General provisions

1.—(1) In so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under that provision.

(2) Without prejudice to sub-paragraph (1) above, any reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or omitted to be done, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of any provisions of this Act shall, except where the context otherwise requires, be construed as including a reference to the corresponding thing done or required or authorised to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of any corresponding provisions of the repealed enactments.

2. Where a document refers expressly or by implication to an enactment repealed by this Act the reference shall (except where the context otherwise requires) be construed as a reference to the corresponding provision of this Act.

3. Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, and there is a corresponding provision in this Act, this Act shall have effect as if that corresponding provision had been in force when that period began to run.

Insignificant agreements under the Restrictive Trade Practices Act 1956, *s.* 12.

1956 c. 68.

4.—(1) Directions under section 12 of the Restrictive Trade Practices Act 1956 in force at the commencement of this Act for the removal from the register of particulars of such agreements as appeared to be of no substantial economic significance continue to have effect by virtue of this paragraph.

(2) Sub-paragraph (1) above does not affect the operation in relation to the agreement of paragraph 1 of Schedule 2 to this Act ;

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and where any such agreement is varied as mentioned in that paragraph—

(*a*) the particulars to be furnished thereunder shall include all such particulars as would be required in the case of an original agreement in the terms of the agreement as varied ;

(*b*) the directions referred to in sub-paragraph (1) shall cease to have effect, but without prejudice to the Secretary of State's power to give further directions under section 21(2) above.

Section 18(2) *of the Restrictive Trade Practices Act* 1956

5. Nothing in this Act affects the right of a person to make an application to the Court in a case where an order is in force against that person under section 18(2) of the Restrictive Trade Practices Act 1956.

1956 c. 68.

Disclosure of information

6. Section 41 above applies in relation to information obtained under or by virtue of—

(*a*) the Restrictive Trade Practices Act 1956 ;

(*b*) the Restrictive Trade Practices Act 1968 ;

1968 c. 66.

as that section applies in relation to information obtained under or by virtue of this Act.

Particulars of certain export agreements

7. Any particulars furnished to the Board of Trade or to the Secretary of State under section 31(1) of the Restrictive Trade Practices Act 1956 shall be treated as if they had been furnished to the Director under sections 24 and 25 above.

Restrictive Trade Practices Act 1968, *s.* 11

8. An agreement which—

(*a*) was made before the commencement of this Act by a society at a time when it was approved for the purposes of section 11 of the Restrictive Trade Practices Act 1968 (wholesale co-operative societies), and

(*b*) by virtue of that approval was not subject to registration under Part I of the Restrictive Trade Practices Act 1956,

shall, notwithstanding the repeal of that section (by the Fair Trading Act 1973), not be subject to registration under this Act.

1973 c. 41.

SCHEDULE 5

Section 44.

Consequential Amendments

Restrictive Trade Practices Act 1956 *c.*68

In section 25(3) of the Restrictive Trade Practices Act 1956 for " Part I of this Act " substitute " the Restrictive Trade Practices Act 1976 ".

Competition Act 1980

CHAPTER 21

ARRANGEMENT OF SECTIONS

Abolition of Price Commission

Section

1. Abolition of Price Commission.

Control of anti-competitive practices

2. Anti-competitive practices.
3. Preliminary investigation by Director of possible anti-competitive practice.
4. Undertakings in consequence of Director's reports.
5. Competition references.
6. Scope of competition references.
7. Supplementary provisions as to competition references.
8. Conclusions and reports of the Commission.
9. Undertakings following report on competition reference.
10. Orders following report on competition reference.

Further references and investigations

11. References of public bodies and certain other persons to the Commission.
12. Orders following report under section 11.
13. Investigations of prices directed by Secretary of State.

Patents and agricultural schemes

14. Applications by Crown concerning patents.
15. Agricultural schemes: special provisions.

General provisions about references and investigations

16. General provisions as to reports.
17. Laying before Parliament and publication of reports.
18. Information and advice about operation of Act.
19. Restriction on disclosure of information.

Grants

Section
20. Power to make grants to certain bodies.

Amendments of Fair Trading Act 1973

21. Monopoly references by Secretary of State alone.
22. Disclosure of reports on monopoly references to persons named.
23. Amendment of s. 137(3) of Fair Trading Act 1973.
24. Modification of provisions about performance of Commission's functions.

Amendments of Restrictive Trade Practices Act 1976

25. Suspension of declarations under section 1(3) of Restrictive Trade Practices Act 1976 pending appeals.
26. Suspension of declarations under section 1(3) of Restrictive Trade Practices Act 1976 pending revision of agreements.
27. Recommendations by services supply associations.
28. Amendments to s. 19 of Restrictive Trade Practices Act 1976.
29. Exemption of certain undertakings from Restrictive Trade Practices Acts.
30. Exemption of copyright agreements from Restrictive Trade Practices Acts.

Supplementary

31. Orders and regulations.
32. Financial provisions.
33. Short title, interpretation, repeals, commencement and extent.

SCHEDULES:

Schedule 1—Supplementary provisions in connection with dissolution of Price Commission.
Schedule 2—Enactments repealed.

ELIZABETH II

Competition Act 1980

1980 CHAPTER 21

An Act to abolish the Price Commission; to make provision for the control of anti-competitive practices in the supply and acquisition of goods and the supply and securing of services; to provide for references of certain public bodies and other persons to the Monopolies and Mergers Commission; to provide for the investigation of prices and charges by the Director General of Fair Trading; to provide for the making of grants to certain bodies; to amend and provide for the amendment of the Fair Trading Act 1973; to make amendments with respect to the Restrictive Trade Practices Act 1976; to repeal the remaining provisions of the Counter-Inflation Act 1973; and for purposes connected therewith. [3rd April 1980]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Abolition of Price Commission

Abolition of Price Commission.

1.—(1) At the expiry of the winding-up period specified in subsection (2) below the Price Commission shall cease to exist and, during that period, the Commission shall exercise their functions solely in accordance with directions given to them by the Secretary of State with a view to bringing the activities of the Commission to an end at or before the expiry of that period.

(2) In this Act "the winding-up period" means the period beginning on the appointed day and ending on the thirtieth day after the appointed day or on such later date as the Secretary of State may specify by order.

PART V

Disclosure of information.

41.—(1) Subject to subsection (2) below, no information with respect to any particular business which has been obtained under or by virtue of the provisions of this Act shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business; but this subsection does not apply to any disclosure of information which is made—

(*a*) for the purpose of facilitating the performance of any functions of the Director, the Monopolies and Mergers Commission, the Secretary of State or any other Minister under this Act or the Fair Trading Act 1973; 1973 c. 41.

(*b*) in pursuance of a Community obligation;

(*c*) for the purposes of any proceedings before the Court or of any other legal proceedings, whether civil or criminal, under this Act or the Fair Trading Act 1973.

(2) Nothing in subsection (1) above shall be construed—

(*a*) as limiting the particulars which may be entered or filed in, or made public as part of, the register under this Act; or

(*b*) as applying to any information which has been made public as part of that register.

(3) Any person who discloses any information in contravention of this section is guilty of an offence and liable—

(*a*) on summary conviction, to a fine not exceeding £400;

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) No prosecution for an offence under this section shall be commenced after the expiry of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

1952 c. 55.

(5) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952, a magistrates' court may try an information for an offence under this section if the information was laid within twelve months from the commission of the offence.

1954 c. 48.

(6) Notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954, summary proceedings in Scotland for an offence under this section may be commenced within twelve months from the commission of the offence, and subsection (2) of the said section 23 applies for the purposes of this subsection as it applies for the purposes of that section.

(7) In the application of this section to Northern Ireland, for the references in subsection (5) above to section 104 of the Magistrates' Courts Act 1952 and to the trial and laying of an information there shall be substituted respectively references to section 34 of the Magistrates' Courts Act (Northern Ireland) 1964 and to the hearing and determination and making of a complaint.

PART V
1952 c. 55.
1964 c. 21 (N.I.).

Orders and regulations.

42.—(1) Any statutory instrument by which—

(*a*) an order is made under section 18(5) or section 33(4) above; or

(*b*) regulations are made under section 27(1) above;

is subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Any power conferred by a preceding provision of this Act to make an order by statutory instrument includes power to revoke or vary that order by a subsequent order made under that provision.

Interpretation and construction.

43.—(1) In this Act—

"agreement" includes any agreement or arrangement, whether or not it is or is intended to be enforceable (apart from any provision of this Act) by legal proceedings, and references in this Act to restrictions accepted or information provisions made under an agreement shall be construed accordingly;

"the Court" means the Restrictive Practices Court;

"designated services" has the meaning given by section 13(1) above;

"the Director" means the Director General of Fair Trading appointed under the Fair Trading Act 1973; 1973 c. 41.

"goods" includes ships and aircraft, minerals, substances and animals (including fish), and references to the production of goods include references to the getting of minerals and the taking of such animals;

"information provision" includes a provision for or in relation to the furnishing of information;

"interconnected bodies corporate" means bodies corporate which are members of the same group, and for the purposes of this definition "group" means a body corporate and all other bodies corporate which are its subsidiaries—

(*a*) within the meaning of section 154 of the Companies Act 1948 (or for companies in Northern Ireland, section 148 of the Companies Act (Northern Ireland) 1960); or 1948 c. 38. 1960 c. 22 (N.I.).

(*b*) in the case of an industrial and provident society, within the meaning of section 15 of the Friendly and Industrial and Provident Societies Act 1968 c. 55.

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1969 c. 24 (N.I.).

1968 (or for industrial and provident societies in Northern Ireland, section 47 of the Industrial and Provident Societies Act (Northern Ireland) 1969);

"price" includes a charge of any description;

"restriction" includes a negative obligation, whether express or implied and whether absolute or not;

"services supply association" means such an association as is described in section 16(1) above;

"supply" includes supply by way of lease or hire, and "acquire" shall be construed accordingly;

"trade association" means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members, or of persons represented by its members.

(2) For the purposes of—

(*a*) sections 6 to 9 above, and Schedule 3 to this Act except for paragraph 5(4) to (8) of that Schedule;

(*b*) Part III of this Act except as is provided by section 19(2) above;

any two or more interconnected bodies corporate, or any two or more individuals carrying on business in partnership with each other, shall be treated as a single person.

(3) This Act applies to the construction or carrying out of buildings, structures and other works by contractors, as it applies to the supply of goods, and for the purposes of this Act any buildings, structures or other works so construed or carried out shall be deemed to be delivered at the place where they are constructed or carried out.

(4) For the purposes of this Act a person shall not be deemed to carry on a business within the United Kingdom by reason only of the fact that he is represented for the purposes of that business by an agent within the United Kingdom.

(5) Any reference in this Act to any other enactment is a reference to that enactment as amended, or extended or applied by or under any other enactment, including this Act.

Consequential amendments, repeals and transitional provisions.

44. The provisions of Schedule 4 to this Act have effect; and subject to the transitional provisions and savings contained in that Schedule—

(*a*) the enactments specified in Schedule 5 to this Act have effect subject to the amendments (being amendments consequent on the provisions of this Act) specified in that Schedule, and

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(*b*) the enactments specified in Schedule 6 to this Act are hereby repealed to the extent specified in the third column of that Schedule,

but nothing in this Act shall be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the operation of repeals).

1889 c. 63.

Short title, extent and commencement.

45.—(1) This Act may be cited as the Restrictive Trade Practices Act 1976.

(2) This Act extends to Northern Ireland.

(3) This Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint.

SCHEDULES

Section 13.

SCHEDULE 1

SERVICES EXCLUDED FROM SECTION 13 (DESIGNATED SERVICES)

1. Legal services (that is to say, the services of barristers, advocates or solicitors in their capacity as such).

2. Medical services (that is to say, the provision of medical or surgical advice or attendance and the performance of surgical operations).

1957 c. 28. 3. Dental services (that is to say, any services falling within the practice of dentistry within the meaning of the Dentists Act 1957).

4. Ophthalmic services (that is to say, the testing of sight).

1966 c. 36. 5. Veterinary services (that is to say, any services which constitute veterinary surgery within the meaning of the Veterinary Surgeons Act 1966).

1957 c. 15. 1951 c. 55. 1970 c. 11 (N.I.). 6. Nursing services (that is to say, any services which constitute nursing within the meaning of the Nurses Act 1957, the Nurses (Scotland) Act 1951 or the Nurses and Midwives Act (Northern Ireland) 1970).

7. The services of midwives, physiotherapists or chiropodists in their capacity as such.

8. The services of architects in their capacity as such.

9. Accounting and auditing services (that is to say, the making or preparation of accounts or accounting records and the examination, verification and auditing of financial statements).

1949 c. 87. 10. The services of patent agents (within the meaning of the Patents Act 1949), in their capacity as such.

11. The services of parliamentary agents entered in the register in either House of Parliament as agents entitled to practise both in promoting and in opposing Bills, in their capacity as such parliamentary agents.

12. The services of surveyors (that is to say, of surveyors of land, of quantity surveyors, of surveyors of buildings or other structures and of surveyors of ships) in their capacity as such surveyors.

13. The services of professional engineers or technologists (that is to say, of persons practising or employed as consultants in the field of—

- (*a*) civil engineering;
- (*b*) mechanical, aeronautical, marine, electrical or electronic engineering;
- (*c*) mining, quarrying, soil analysis or other forms of mineralogy or geology;
- (*d*) agronomy, forestry, livestock rearing or ecology;
- (*e*) metallurgy, chemistry, biochemistry or physics; or

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- (*f*) any other form of engineering or technology analogous to those mentioned in the preceding sub-paragraphs);

in their capacity as such engineers or technologists.

14. Services consisting of the provision—

- (*a*) of primary, secondary or further education within the meaning of the Education Act 1944, the Education (Scotland) Acts 1939 to 1971 or the Education and Libraries (Northern Ireland) Order 1972, or 1944 c. 31. 1972/1263 (N.I.12)
- (*b*) of university or other higher education not falling within the preceding sub-paragraph.

15. The services of ministers of religion in their capacity as such ministers.

Section 24.

SCHEDULE 2

FURNISHING OF PARTICULARS OF AGREEMENTS

1.—(1) Subject to paragraph 2 below, the duty to furnish particulars in respect of an agreement which at any time is subject to registration shall not be affected by any subsequent variation or determination of the agreement.

(2) If at any time after an agreement has become subject to registration it is varied (whether in respect of the parties or in respect of the terms) or determined otherwise than by effluxion of time, particulars of the variation or determination shall be furnished to the Director.

2.—(1) The following provisions of this paragraph apply where an agreement becomes subject to registration after it is made.

(2) If, before the expiry of the time within which, apart from this paragraph, particulars would be required to be furnished in respect of the agreement, and before particulars have been so furnished, the agreement is determined (whether by effluxion of time or otherwise), section 24(1) above and paragraph 1 above shall cease to apply to the agreement.

(3) If, before the expiry of that time and before particulars have been furnished in respect of the agreement, the agreement is varied, the particulars to be furnished under section 24 shall be particulars of the agreement as varied, and paragraph 1 above shall not apply in relation to the variation.

3. Particulars of an agreement shall—

- (*a*) in so far as the agreement, or any variation or determination of it, is made by an instrument in writing, be furnished by the production of the original or a true copy of the instrument;
- (*b*) in so far as the agreement, or any variation or determination of it, is not made by an instrument in writing, be furnished by the production of a memorandum in writing signed by the person by whom the particulars are furnished.

Sch. 2

4.—(1) Particulars may be furnished by or on behalf of any person who is party to the agreement or, as the case may be, was party thereto immediately before its determination.

(2) Where such particulars are duly furnished by or on behalf of any such person the provisions of section 24 and this Schedule shall be deemed to be complied with on the part of all such persons.

5.—(1) The following Table shows the time within which particulars of agreements and any variation or determination of an agreement, are to be furnished under section 24 and this Schedule:—

TABLE

Description of agreement	*Time for registering particulars*
(*a*) Agreement made on or after 25th November 1968, other than an agreement to which (*b*) to (*j*) below apply.	Before the date on which any restriction accepted or information provision made under the agreement takes effect, and in any case within 3 months from the day on which the agreement is made.
(*b*) Agreement approved by order under section 29 or section 30 above which becomes subject to registration by virtue of the expiry or revocation of that order.	Within 1 month from the day on which the agreement becomes so subject.
(*c*) Agreement which becomes subject to registration by virtue of the revocation of an order under section 9(5) above.	Within 1 month from the day on which the agreement becomes so subject.
(*d*) Agreement which becomes subject to registration by virtue of an order under section 7 above coming into force after the making of the agreement.	Within 3 months from the day on which the agreement becomes so subject.
(*e*) Agreement which becomes subject to registration by virtue of an order under section 11 or section 12 above coming into force after the making of the agreement.	Within 3 months from the day on which the agreement becomes so subject.
(*f*) Agreement whether made before on or after 25th November 1968 which becomes subject to registration by virtue of a variation on or after that date.	Within the time which would apply under (*a*) above if the agreement were made on the day on which it becomes so subject.
(*g*) Agreement which becomes subject to registration by virtue of the expiry or withdrawal of an approval given under section 32 above.	Within 3 months from the day on which the agreement becomes so subject.
(*h*) Agreement which was subject to registration on 25th November 1968, of which particulars had not been duly furnished.	Within 3 months from 25th November 1968.
(*i*) Variation on or after 25th November 1968 of an agreement (whether made before or after that date) being a variation which extends or adds to the restrictions accepted or information provisions made under the agreement.	Within the time which would apply under (*a*) above in the case of an agreement made on the day of the variation.
(*j*) Any other variation of an agreement, and the determination of an agreement.	Within 3 months from the day of the variation or determination.

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(2) Any reference in the second column of the Table in this paragraph to a period calculated from a specified day is a reference to the period in question inclusive of that day.

SCHEDULE 3

Section 28.

EXCEPTED AGREEMENTS

Agreements for statutory purposes

1.—(1) This Act does not apply to an agreement which is expressly authorised by an enactment, or by any scheme, order or other instrument made under an enactment.

(2) This Act does not apply to an agreement which constitutes or forms part of a scheme certified by the Secretary of State under Chapter V of Part XIV of the Income and Corporation Taxes Act 1970 (which relates to schemes for rationalising industry). 1970 c. 10.

(3) Sub-paragraphs (1) and (2) above have effect in relation to any agreement notwithstanding any order under section 11 or section 12 above.

Exclusive dealing

2. This Act does not apply to an agreement for the supply of goods between two persons, neither of whom is a trade association, being an agreement to which no other person is party and under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made other than restrictions accepted or provision made for the furnishing of information—

(*a*) by the party supplying the goods, in respect of the supply of goods of the same description to other persons; or

(*b*) by the party acquiring the goods, in respect of the sale, or acquisition for sale, of other goods of the same description.

PART IV

person examined, and may thereafter be used in evidence against him;

(d) the Court may require the person examined to produce any such particulars, documents or information in his possession or control as may be specified in the notice given by the Director as aforesaid.

(3) Where notice under section 36 has been given to a body corporate, an order may be made under this section for the attendance and examination—

(a) of any director, manager, secretary or other officer of that body corporate; or

(b) of any other person who is employed by the body corporate and appears to the Court to be likely to have particular knowledge of any of the matters in respect of which the notice was given.

(4) In any case referred to in subsection (3) above—

(a) the reference in subsection (1) above to matters in respect of which the Director has given notice to the person examined shall be construed as a reference to matters in respect of which notice was given to the body corporate; and

(b) in paragraph (d) of subsection (2) above and in paragraph (c) so far as it relates to evidence, references to the person examined shall include references to the body corporate.

(5) The provisions of subsections (3) and (4) above have effect—

(a) in relation to a trade association which is not incorporated;

(b) in relation to a services supply association which is not incorporated;

as those provisions have effect in relation to a body corporate.

(6) Nothing in this section shall be taken to compel the disclosure by a barrister, advocate or solicitor of any privileged communication made by or to him in that capacity, or the production by him of any document containing any such communication.

Offences in connection with registration.

38.—(1) A person who fails without reasonable excuse to comply with a notice duly given to him under section 36 above is guilty of an offence and liable on summary conviction to a fine not exceeding £100.

(2) If a person who furnishes or is required to furnish any particulars, documents or information under this Act—

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(a) makes any statement, or furnishes any document, which he knows to be false in a material particular; or

(b) recklessly makes any statement, or furnishes any document, which is false in a material particular; or

(c) wilfully alters, suppresses or destroys any document which he is required to furnish as aforesaid;

he is guilty of an offence under this section.

(3) A person guilty of an offence mentioned in subsection (2) above is liable—

(a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £100, or to both such imprisonment and such a fine; or

(b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both such imprisonment and a fine.

(4) If any default in respect of which a person is convicted of an offence under subsection (1) above continues after the conviction, that person is guilty of a further offence and liable on summary conviction to a fine—

(a) not exceeding £100; or

(b) not exceeding £10 for every day on which the default continues within the three months next following his conviction for the first-mentioned offence;

whichever is the greater.

(5) For the purposes of subsection (4) above a default in respect of the furnishing of any particulars, documents or information shall be deemed to continue until the particulars, documents or information have been furnished.

(6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

(7) In this section "director", in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

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Proceedings and venue in respect of offences.

39.—(1) No proceedings for an offence under the preceding provisions of this Act shall be instituted—

(a) in England and Wales except by or with the consent of the Director of Public Prosecutions or the Director;

(b) in Northern Ireland except by or with the consent of the Attorney General for Northern Ireland or the Director.

(2) Any information relating to an offence under the preceding provisions of this Act may be tried by a magistrates' court or by a court of summary jurisdiction in Northern Ireland, if it is laid at any time—

(a) within three years after the commission of the offence; and

(b) within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions, the Attorney General for Northern Ireland or the Director, as the case may be, to justify the proceedings comes to his knowledge;

1952 c. 55.
1964 c. 21 (N.I.).

notwithstanding anything in section 104 of the Magistrates' Courts Act 1952 or in section 34 of the Magistrates' Courts Act (Northern Ireland) 1964.

(3) Proceedings in Scotland for an offence against the preceding provisions of this Act may be commenced at any time—

(a) within three years after the commission of the offence; and

(b) within twelve months after the date on which evidence sufficient in the Director's opinion to justify a report to the Lord Advocate with a view to consideration of the question of proceedings comes to the Director's knowledge;

1954 c. 48.

notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954.

(4) For the purposes of subsections (2) and (3) above, a certificate of the Director of Public Prosecutions, the Attorney General for Northern Ireland or the Director, as the case may be, as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence.

(5) An offence under section 38 above may be tried by a court having jurisdiction either in the county or place in which the offence was actually committed or in any county or place in which the alleged offender carries on business.

S.I. 1972/538 (N.I. 1).

(6) For the purposes of article 7(2) of the Prosecution of Offences (Northern Ireland) Order 1972 (which relates to consents to prosecutions by the Director of Public Prosecutions for Northern Ireland) subsections (1) and (2) above shall be treated as if they were in force before the coming into operation of that order.

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PART V

MISCELLANEOUS AND SUPPLEMENTAL

Order under s. 56 of Fair Trading Act 1973.

40.—(1) The Court may, upon application made by any person who desires to make an agreement—

(a) which, if made, would be an agreement to which this Act applies, and

1973 c. 41.

(b) is one the making of which is unlawful by virtue of any order in force under section 56 of the Fair Trading Act 1973 or having effect as if made under that section,

declare whether or not any restrictions or information provisions by virtue of which this Act would apply to the agreement (not being such restrictions or information provisions as are described in paragraphs (b) to (d) of paragraph 6(1) of Schedule 3 to this Act) are contrary to the public interest.

(2) The provisions of section 2(1) to (4) above apply with the necessary modifications in relation to any such declaration as they apply in relation to a finding under that section.

(3) Where an application is made to the Court under subsection (1) above and—

(a) on that application the Court makes a declaration under that subsection in relation to a restriction proposed to be accepted or an information provision proposed to be made under an agreement, and

(b) by virtue of an order under section 56 of the 1973 Act which is for the time being in force, the making or carrying out of an agreement under which that restriction was accepted or that information provision was made would be unlawful,

the order under section 56 of the 1973 Act shall cease to have effect in so far as it renders unlawful the making or carrying out of an agreement under which that restriction is accepted or that information provision is made.

(4) The Director shall be the respondent to any application made under this section; and the provisions of section 10 or section 19 above apply with the necessary modifications in relation to proceedings on any such application as they apply in relation to the proceedings mentioned in that section.

(3) The provisions of Schedule 1 to this Act shall have effect in connection with the dissolution of the Price Commission and, subject to the provisions of that Schedule—

(*a*) any rights or obligations of the Price Commission which remain in existence immediately before the expiry of the winding-up period and any property held by the Commission at that time shall, on the expiry of that period, become rights, obligations and property of the Secretary of State; and

(*b*) after the expiry of the winding-up period, anything which, apart from subsection (1) above, would be required or permitted to be done by or to the Price Commission shall or may be done by or to the Secretary of State.

Control of anti-competitive practices

Anti-competitive practices.

2.—(1) The provisions of sections 3 to 10 below have effect with a view to the control of anti-competitive practices, and for the purposes of this Act a person engages in an anti-competitive practice if, in the course of business, that person pursues a course of conduct which, of itself or when taken together with a course of conduct pursued by persons associated with him, has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in the United Kingdom or any part of it or the supply or securing of services in the United Kingdom or any part of it.

(2) To the extent that a course of conduct is required or envisaged by a material provision of, or a material recommendation in, an agreement which is registered or subject to registration under the Restrictive Trade Practices Act 1976, that course of conduct shall not be regarded as constituting an anti-competitive practice for the purposes of this Act; and for the purposes of this subsection— 1976 c. 34.

(*a*) a provision of an agreement is a material provision if, by virtue of the existence of the provision (taken alone or together with other provisions) the agreement is one to which that Act applies; and

(*b*) a recommendation is a material recommendation in an agreement if it is one to which a term implied into the agreement by any provision of section 8 or section 16 of that Act (terms implied into trade association agreements and services supply association agreements) applies.

(3) For the purposes of this Act, a course of conduct does not constitute an anti-competitive practice if it is excluded for those purposes by an order made by the Secretary of State; and any

such order may limit the exclusion conferred by it by reference to a particular class of persons or to particular circumstances.

(4) Without prejudice to the generality of subsection (3) above, an order under that subsection may exclude the conduct of any person by reference to the size of his business, whether expressed by reference to turnover, as defined in the order, or to his share of a market, as so defined, or in any other manner.

(5) For the purpose only of enabling the Director General of Fair Trading (in this Act referred to as "the Director") to establish whether any person's course of conduct is excluded by virtue of any such provision of an order under subsection (3) above as is referred to in subsection (4) above, the order may provide for the application, with appropriate modifications, of any provisions of sections 44 and 46 of the Fair Trading Act 1973 (power of Director to require information). 1973 c. 41.

(6) For the purposes of this section any two persons are to be treated as associated—

(*a*) if one is a body corporate of which the other directly or indirectly has control either alone or with other members of a group of interconnected bodies corporate of which he is a member, or

(*b*) if both are bodies corporate of which one and the same person or group of persons directly or indirectly has control;

and for the purposes of this subsection a person or group of persons able directly or indirectly to control or materially to influence the policy of a body corporate, but without having a controlling interest in that body corporate, may be treated as having control of it.

(7) In this section "the supply or securing of services" includes providing a place or securing that a place is provided other than on a highway, or in Scotland a public right of way, for the parking of a motor vehicle (within the meaning of the Road Traffic Act 1972). 1972 c. 20.

(8) For the purposes of this Act any question whether, by pursuing any course of conduct in connection with the acquisition of goods or the securing of services by it, a local authority is engaging in an anti-competitive practice shall be determined as if the words "in the course of business" were omitted from subsection (1) above; and in this subsection "local authority" means—

(*a*) in England and Wales, a local authority within the meaning of the Local Government Act 1972, the Common Council of the City of London or the Council of the Isles of Scilly, 1972 c. 70.

1973 c. 65. (*b*) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973, and

1972 c. 9. (N.I.). (*c*) in Northern Ireland, a district council established under the Local Government Act (Northern Ireland) 1972.

Preliminary investigation by Director of possible anti-competitive practice.

3.—(1) If it appears to the Director that any person has been or is pursuing a course of conduct which may amount to an anti-competitive practice, the Director may in accordance with this section carry out an investigation with a view to establishing whether that person has been or is pursuing a course of conduct which does amount to such a practice.

(2) Before carrying out an investigation under this section, the Director shall—

(*a*) give to the Secretary of State and the person or persons whose conduct is to be investigated notice of the proposed investigation, together with an indication of the matters to be investigated, the person or persons concerned and the goods or services to which the investigation is to relate; and

(*b*) arrange for notice of the proposed investigation, together with an indication of the matters to be investigated, the person or persons concerned and the goods or services to which the investigation is to relate, to be published in such manner as the Director considers most suitable for bringing the proposed investigation to the attention of any other persons who, in the opinion of the Director, would be affected by or be likely to have an interest in the investigation.

(3) The Secretary of State may by regulations prescribe the manner in which any notice is to be given under subsection (2) above, and the evidence which is to be sufficient evidence of its having been given, and of its contents and authenticity.

(4) Subject to the following provisions of this section, where notice of a proposed investigation has been given in accordance with paragraph (*a*) and published in accordance with paragraph (*b*) of subsection (2) above, the Director shall proceed with the investigation as expeditiously as possible.

(5) If, before the end of the period of two weeks beginning with the day on which the Secretary of State receives notice of a proposed investigation under paragraph (*a*) of subsection (2) above, the Secretary of State directs the Director not to proceed with the investigation the Director shall take no further action under this section with respect to the matters referred to in the notice; but nothing in this subsection shall prevent the Director from proceeding with a subsequent investigation, notwithstanding that it relates wholly or partly to the same matters.

(6) Where the Secretary of State gives a direction under subsection (5) above, he shall—

(*a*) give notice of the direction to the person or persons whose conduct was to be investigated; and

(*b*) arrange for the direction to be published in such manner as he considers most suitable for bringing it to the attention of any other person who, in his opinion, would have been affected by, or likely to have had an interest in, the direction.

(7) For the purposes of an investigation under this section the Director may, by notice in writing signed by him—

(*a*) require any person to produce, at a time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and releting to any matter relevant to the investigation; or

(*b*) require any person carrying on any business to furnish to the Director such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished;

but no person shall be compelled for the purpose of any such investigation to produce any document which he could not be compelled to produce in civil proceedings before the High Court or, in Scotland, the Court of Session or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(8) Subsections (5) to (8) of section 85 of the Fair Trading Act 1973 (enforcement provisions relating to notices under subsection (1) of that section requiring production of documents etc.) shall apply in relation to a notice under subsection (7) above as they apply in relation to a notice under subsection (1) of that section. 1973 c. 41.

(9) At any time before the completion of an investigation under this section the Director may, with the consent of the Secretary of State, determine not to proceed with the investigation and, in that event, he shall—

(*a*) give notice of his determination to the person or persons whose conduct was being investigated; and

(5) Subject to subsection (6) below, on a competition reference the Commission shall investigate and report on the following questions, namely—

(*a*) whether any person subject to the reference was at any time during the period of twelve months ending on the date of the reference pursuing, in relation to goods or services specified in the reference, a course of conduct so specified or any other course of conduct which appears to be similar in form and effect to the one so specified ; and

(*b*) whether, by pursuing any such course of conduct, a person subject to the reference was at any time during that period engaging in an anti-competitive practice ; and

(*c*) whether, if any person was so engaging in an anti-competitive practice, the practice operated or might be expected to operate against the public interest.

(6) The Director may at any time, by notice given to the Commission, restrict the scope of a competition reference by excluding from the reference—

(*a*) some or all of the activities of any person subject to the reference,

(*b*) any goods or services specified in the reference, or

(*c*) any course of conduct so specified,

and, subject to section 7 below, on the receipt of such notice the Commission shall discontinue their investigation so far as it relates to any matter so excluded and shall make no reference to any such matter in their report.

Supplementary provisions as to competition references.

7.—(1) On making a competition reference or on varying such a reference under section 6(6) above the Director shall send a copy of the reference or, as the case may be, the variation to the Secretary of State.

(2) If, before the end of the period of two weeks beginning with the day on which the Secretary of State receives a copy of a competition reference under subsection (1) above, the Secretary of State directs the Commission not to proceed with the reference—

(*a*) the Commission shall not proceed with that reference, but

(*b*) nothing in paragraph (*a*) above shall prevent the Commission from proceeding with a subsequent competition reference, notwithstanding that it relates wholly or partly to the same matters.

(3) If, before the end of the period of two weeks beginning with the day on which the Secretary of State receives a copy of a variation of a competition reference under subsection (1) above, the Secretary of State directs the Commission not to give effect to the variation—

(*a*) the Commission shall proceed with the reference as if that variation had not been made, but

(*b*) nothing in paragraph (*a*) above shall prevent the Commission from giving effect to any subsequent variation, notwithstanding that it relates wholly or partly to the matters to which that variation related.

(4) On making a competition reference or on varying such a reference under section 6(6) above the Director shall arrange for the reference or, as the case may be, the variation to be published in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would be affected by it or be likely to have an interest in it.

(5) Where the Secretary of State gives a direction under subsection (2) or subsection (3) above, the Secretary of State shall arrange for the direction to be published in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would have been affected by, or likely to have had an interest in, the reference or variation to which the direction relates.

(6) Sections 70 (time limit for report on merger reference), 84 (public interest) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973 and Part II of Schedule 3 to that Act (performance of functions of Commission) shall apply in relation to competition references as if— 1973 c. 41.

(*a*) the functions of the Commission in relation to those references were functions under that Act ;

(*b*) the expression "merger reference" included a competition reference ;

(*c*) in paragraph 11 of that Schedule the reference to section 71 of that Act were a reference to section 6(6) above ; and

(*d*) in paragraph 16(2) of that Schedule the reference to section 56 of that Act were a reference to sections 9 and 10 below.

Conclusions and reports of the Commission.

8.—(1) A report of the Commission on a competition reference shall be made to the Secretary of State.

(2) Subject to section 6(6) above and subsection (3) below, a report on a competition reference shall state, with reasons, the conclusions of the Commission with respect to the following matters—

(*a*) whether any person whose activities were investigated was at any time during the period of twelve months referred to in paragraph (*a*) of subsection (5) of section 6 above pursuing any such course of conduct as is referred to in that paragraph ; and

(*b*) if so, whether by pursuing such a course of conduct any such person was at any time during that period engaging in an anti-competitive practice ; and

(*c*) if so, whether that anti-competitive practice operated or might be expected to operate against the public interest ; and

(*d*) if so, what are, or are likely to be, the effects adverse to the public interest.

(3) If, on a competition reference, the Commission conclude that any person was pursuing such a course of conduct as is referred to in section 6(5)(*a*) above but that, by virtue of section 2(2) above, that course of conduct does not, in whole or in part, constitute an anti-competitive practice, the Commission shall state their conclusion in their report and shall not make any recommendation under subsection (4) below with respect to things done as mentioned in section 2(2) above.

(4) If, on a competition reference, the Commission conclude that any person was at any time during the period of twelve months referred to in section 6(5)(*a*) above engaging in an anti-competitive practice which operated or might be expected to operate against the public interest, the Commission—

(*a*) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing the adverse effects of that practice ; and

(*b*) may, if they think fit, include in their report recommendations as to such action including, where appropriate, action by one or more Ministers (including Northern Ireland departments) or other public authorities.

(5) A copy of every report of the Commission on a competition reference shall be transmitted by the Commission to the Director ; and the Secretary of State shall take account of any advice given to him by the Director with respect to any such report.

Undertakings following report on competition reference.

9.—(1) In any case where—

(*a*) the report of the Commission on a competition reference concludes that any person specified in the report was engaging in an anti-competitive practice which operated or might be expected to operate against the public interest, and

(*b*) it appears to the Secretary of State that the effects of that practice which are adverse to the public interest might be remedied or prevented if that person or any other person specified in the report took or refrained from taking any action,

the Secretary of State may by notice in writing request the Director to seek to obtain from the person or, as the case may be, each of the persons specified in the notice an undertaking to take or refrain from taking any action with a view to remedying or preventing those adverse effects.

(2) Where the Secretary of State makes a request under subsection (1) above—

(*a*) he shall at the same time send a copy of the notice by which the request is made to the person or, as the case may be, each of the persons from whom an undertaking is to be sought ; and

(*b*) it shall be the duty of the Director to seek to obtain an undertaking or undertakings of the description requested.

(3) In any case where—

(*a*) the Director is satisfied that a person from whom he has been requested to seek to obtain an undertaking is unlikely to give a suitable undertaking within a reasonable time, or

(*b*) having allowed such time as in his opinion is reasonable for the purpose, he is satisfied that a suitable undertaking has not been given by the person in question,

the Director shall give such advice to the Secretary of State as he may think proper in the circumstances.

(4) Where, following a request under subsection (1) above, an undertaking has been accepted by the Director, it shall be his duty—

(*a*) to give a copy of the undertaking to the Secretary of State ;

(*b*) to arrange for the undertaking to be published in such manner as appears to him to be appropriate ;

(*c*) to keep under review the carrying out of the undertaking and from time to time to consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either the person concerned can be released from the undertaking or the undertaking needs to be varied or to be superseded by a new undertaking ; and (*d*) if it appears to him that any person can be so released or that an undertaking has not been or is not being fulfilled, or needs to be varied or superseded, to give such advice to the Secretary of State as he may think proper in the circumstances.

(5) If, following advice from the Director that a person can be released from an undertaking, the Secretary of State considers that it is appropriate for the Director to release him from it—

(*a*) the Secretary of State shall request the Director to do so, and

(*b*) the Director shall give the person concerned notice that he is released from the undertaking;

and regulations under subsection (9) of section 4 above shall apply in relation to such a notice as they apply to a notice under subsection (5) of that section.

(6) The Secretary of State shall take account of any advice given to him by the Director under this section (including advice as to the exercise by the Secretary of State of any of his powers under this Act).

Orders following report on competition reference.

10.—(1) If, in any case where the report of the Commission on a competition reference concludes that any person specified in the report was engaged in an anti-competitive practice which operated or might be expected to operate against the public interest—

(*a*) the Secretary of State has not under section 9(1) above requested the Director to seek to obtain undertakings from one or more of the persons so specified, or

(*b*) following a request under subsection (1) of section 9 above, the Director has informed the Secretary of State that he is satisfied as mentioned in paragraph (*a*) or paragraph (*b*) of subsection (3) of that section, or

(*c*) the Director has informed the Secretary of State that an undertaking accepted by him under section 9 above from a person specified in the report has not been or is not being fulfilled,

the Secretary of State may, if he thinks fit, make an order under this section.

(2) Subject to the following provisions of this section, an order under this section may do either or both of the following, that is to say—

(*a*) prohibit a person named in the order from engaging in any anti-competitive practice which was specified in the report or from pursuing any other course of conduct which is similar in form and effect to that practice; and

(*b*) for the purpose of remedying or preventing any adverse effects which are specified in the report as mentioned in section 8(2)(*d*) above, exercise one or more of the powers specified in Part I of Schedule 8 to the Fair Trading Act 1973 to such extent and in such manner as the Secretary of State considers necessary for that purpose. 1973 c. 41.

(3) No order may be made by virtue of paragraph (*a*) of subsection (2) above in respect of any person unless he is a person specified in the Commission's report and either—

(*a*) he has not given an undertaking which the Director sought to obtain from him in pursuance of a request under section 9(1) above; or

(*b*) the Director was not requested under section 9(1) above to seek to obtain an undertaking from him; or

(*c*) the Director has informed the Secretary of State that an undertaking given by him and accepted by the Director under section 9 above has not been or is not being fulfilled.

(4) In the Fair Trading Act 1973—

(*a*) section 90 (general provisions as to orders under section 56 etc.) except subsection (2),

(*b*) section 91(2) (publication of proposals to make an order),

(*c*) section 93 (enforcement of certain orders), and

(*d*) Part I of Schedule 8 (powers exercisable by orders under section 56 etc.),

shall have effect as if any reference in those provisions to an order under section 56 of that Act included a reference to an order under this section.

Further references and investigations

References of public bodies and certain other persons to the Commission.

11.—(1) The Secretary of State may at any time refer to the Commission any question relating to—

(*a*) the efficiency and costs of,

(*b*) the service provided by, or

(*c*) possible abuse of a monopoly situation by,

a person falling within subsection (3) below and specified in the reference, including any question whether, in relation to a matter falling within paragraph (*a*), (*b*) or (*c*) above, the person is pursuing a course of conduct which operates against the public interest.

(2) For the purposes of subsection (1)(*c*) above " monopoly situation " includes a monopoly situation which is limited to a part of the United Kingdom and, accordingly, for those purposes references to the United Kingdom in sections 6 and 7 of the
1973 c. 41. Fair Trading Act 1973 shall be taken to include references to a part of the United Kingdom.

(3) The persons referred to in subsection (1) above are—

(*a*) any body corporate—

(i) which supplies goods or services by way of business,

(ii) the affairs of which are managed by its members, and

(iii) the members of which hold office as such by virtue of their appointment to that or another office by a Minister under any enactment; or

(*b*) any person (not falling within paragraph (*a*) above) who provides a bus service, within the meaning of the Transport Act 1968 or the Finance Act (Northern Ireland) 1966, or a London bus service, within the meaning of the Transport (London) Act 1969; or

1968 c. 73.
1966 c. 21 (N.I.).
1969 c. 35.

(*c*) any statutory water undertaker, within the meaning of the Water Act 1973; or

1973 c. 37.

(*d*) any board administering a scheme under the Agricultural Marketing Act 1958 or the Agricultural Marketing Act (Northern Ireland) 1964; or

1958 c. 47.
1964 c. 13 (N.I.).

(*e*) any body corporate with a statutory duty to promote and assist the maintenance and development of the efficient supply of any goods or services by a body falling within paragraphs (*a*) to (*d*) above; or

1948 c. 38. (*f*) any subsidiary, within the meaning of the Companies Act 1948, of a body falling within paragraphs (*a*) to (*e*) above.

(4) The Secretary of State may by order exclude from subsection (3)(*b*) above persons of such descriptions as may be specified in the order.

(5) No question concerning a person falling within subsection (3)(*b*) above or a subsidiary of a body falling within that subsection may be referred to the Commission under this section unless it relates to the carriage of passengers by the person or, as the case may be, the subsidiary.

(6) The Secretary of State may at any time by notice given to the Commission vary a reference under this section.

(7) On making a reference under this section or on varying such a reference under subsection (6) above the Secretary of State shall arrange for the reference or, as the case may be, the variation to be published in such manner as he considers most suitable for bringing it to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.

(8) On a reference under this section the Commission shall investigate and report on any question referred to them but shall exclude from their investigation and report consideration of—

(*a*) any question relating to the appropriateness of any financial obligations or guidance as to financial objectives (however expressed) imposed on or given to the person in question by or under any enactment, or otherwise by a Minister; and

(*b*) the question whether any course of conduct required or envisaged as mentioned in section 2(2) above operates against the public interest.

(9) Sections 70 (time limit for report on merger reference), 84 (public interest) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973 and Part II of Schedule 3 to that Act (performance of functions of Commission) shall apply in relation to a reference under this section as if— 1973 c. 41.

(*a*) the functions of the Commission under this section were functions under that Act;

(*b*) the expression " merger reference " included a reference to the Commission under this section;

(*c*) in paragraph 11 of that Schedule, the reference to section 71 of that Act were a reference to subsection (6) above; and

(*d*) in paragraph 16(2) of that Schedule, the reference to section 56 of that Act were a reference to section 12 below.

(10) A report of the Commission on a reference under this section shall be made to the Secretary of State and shall state, with reasons, the conclusions of the Commission with respect to any question referred to them and, where the Commission conclude that the person specified in the reference is pursuing a course of conduct which operates against the public interest, the report may include recommendations as to what action (if any) should be taken by the person for the purpose of remedying or preventing what the Commission consider are the adverse effects of that course of conduct.

(11) In this section " Minister " includes a Northern Ireland department and the head of such a department.

Orders following report under section 11.

12.—(1) This section applies where a report of the Commission on a reference under section 11 above concludes that the person specified in the reference is pursuing a course of conduct which operates against the public interest.

Amendments of Fair Trading Act 1973

Monopoly references by Secretary of State alone.
1973 c. 41.

21. It is hereby declared that where it appears to the Secretary of State that—

(*a*) a monopoly situation exists or may exist as mentioned in subsection (1) of section 51 of the Fair Trading Act 1973 (monopoly references by Ministers), and

(*b*) the goods or services in question are of a description mentioned in subsection (2) of that section, and

(*c*) none of the Ministers mentioned in subsection (3) of that section has such functions as are mentioned in subsection (2) of that section in relation to goods or services of that description,

the Secretary of State may make a monopoly reference with respect to the existence or possible existence of that situation acting alone; and accordingly any reference which has been made in such circumstances by the Secretary of State acting alone has been made in compliance with that section.

Disclosure of reports on monopoly references to persons named.

22. In section 83 of the Fair Trading Act 1973 (laying before Parliament of reports under that Act)—

(*a*) at the beginning of subsection (1) there shall be inserted the words "Subject to subsection (1A) below"; and

(*b*) after subsection (1) there shall be inserted the following subsection:—

> "(1A) The Minister or Ministers to whom a report of the Commission on a monopoly reference is made shall not lay a copy of the report before either House of Parliament unless at least twenty-four hours before doing so he transmits or they transmit to every person named in the report as a person in whose favour a monopoly situation exists a copy of the report in the form in which it is laid (or by virtue of subsection (2) below is treated as being laid) before each House of Parliament.".

Amendment of s. 137(3) of Fair Trading Act 1973.

23. In section 137(3) of the Fair Trading Act 1973 (definition of "the supply of services") there shall be inserted after paragraph (*b*) the following words:—

> " and
>
> (*c*) includes the making of arrangements for a person to put or keep on land a caravan (within the meaning of Part I of the Caravan Sites and Control of Development Act 1960) other than arrangements by virtue of which the person may occupy the caravan as his only or main residence ".

Modification of provisions about performance of Commission's functions.
1973 c. 41.

24.—(1) The Secretary of State may by order make such modifications in Part II of Schedule 3 to the Fair Trading Act 1973 (performance of functions of Commission) as appear to him to be appropriate for improving the performance by the Commission of their functions.

(2) An order under this section may contain such transitional, incidental or supplementary provisions as the Secretary of State thinks fit.

Amendments of Restrictive Trade Practices Act 1976

Suspension of declarations under section 1(3) of Restrictive Trade Practices Act 1976 pending appeals.
1976 c. 34.

25. Where on an application under section 1(3) of the Restrictive Trade Practices Act 1976 the Court declares at any time after the coming into force of this section that any restrictions or information provisions are contrary to the public interest, that declaration shall not have effect—

(*a*) until the expiration of the period of 21 days beginning with the expiration of the period within which any party to that application may appeal against the declaration, and

(*b*) in a case where such an appeal is brought, until the expiration of the period of 21 days after the date on which the appeal has been finally determined or withdrawn.

Suspension of declarations under section 1(3) of Restrictive Trade Practices Act 1976 pending revision of agreements.

26.—(1) Where the Court has declared under section 1(3) of the Restrictive Trade Practices Act 1976 that any restrictions or information provisions in an agreement are contrary to the public interest, any party to the agreement or to the proceedings in which the declaration was made may, at any time before the declaration comes into effect, submit a revised agreement or a draft of a revised agreement to the Court and the Court may declare that any restrictions or information provisions contained in the revised agreement by virtue of which the said Act of 1976 applies or would apply to that agreement are not contrary to the public interest.

(2) Variations of the agreement in relation to which the declaration under section 1(3) of the said Act of 1976 was made may not be submitted to the Court under subsection (1) above unless particulars of them have been furnished to the Director under section 24(2) of that Act and a new agreement may not be so submitted unless it has been registered under that Act and particulars of any variation of it have been so furnished.

(3) The duty of taking proceedings before the Court imposed on the Director by section 1(2)(*c*) of the said Act of 1976 shall not apply in respect of an agreement if the Court has declared under subsection (1) above that all the restrictions or information provisions by virtue of which that Act applies to the agreement are not contrary to the public interest.

(4) Where any person who may make an application under subsection (1) above in relation to a declaration applies to the Court at any time before the declaration comes into effect for an extension of the period after which it will come into effect to enable an application to be made to the Court under subsection (1) above and it appears to the Court reasonable to do so, it may extend that period by such period (not exceeding six months on a first application under this subsection or three months on a second such application) as it thinks fit, but no more than two extensions may be made in respect of any declaration.

(5) Where, following a declaration under section 1(3) of the said Act of 1976, an application is made under subsection (1) or (4), above, the declaration shall not come into effect until the application has been determined.

(6) The Court may, if it thinks fit, grant an extension under subsection (4) above in relation to some but not all of the restrictions and information provisions in question and in that event—

(*a*) the period within which an application under subsection (1) above or a second application under subsection (4) above may be made shall not expire until the declaration has come into effect in relation to all the restrictions or information provisions, and

(*b*) subsection (5) above shall not prevent a declaration coming into effect in relation to any restriction or information provision in relation to which no extension was granted.

(7) Notice of an application made under subsection (1) or (4) above shall be served on the Director in accordance with rules of court and the Director shall be entitled in accordance with such rules to appear and to be heard on the application.

(8) Where a declaration is made under subsection (1) above the Director shall cause notice of it to be entered in the register kept by him under section 23 of the said Act of 1976—

(*a*) in the case of a declaration in relation to restrictions or information provisions contained in an agreement registered under the Act, on the making of the declaration, and

(*b*) in the case of a declaration in relation to restrictions or information provisions contained in a draft agreement, on the registration of an agreement in the form of the draft.

(9) Sections 10 and 19 of the said Act of 1976 (public interest) shall apply to proceedings under this section as they apply to proceedings under Part I of that Act.

Recommendations by services supply associations.
1976 c. 34.

27.—(1) An order under section 11 of the Restrictive Trade Practices Act 1976 (restrictive agreements as to services) may provide that section 16(3) of that Act (recommendations by services supply associations to members about services) shall not apply to recommendations of such descriptions as may be specified in the order and an order under section 12 of that Act (information agreements as to services) may make similar provision in relation to section 16(5) of that Act (recommendations by services supply associations to members about furnishing information).

(2) Where—

(*a*) section 16 of that Act would (apart from this subsection) apply in relation to a recommendation by a services supply association, and

(*b*) if the sole term of the agreement for the constitution of the association were a term by which each member of it agreed to comply with that recommendation, the agreement would be excluded by the terms of the order from the operation of an order made, or having effect as if made, under section 11 of that Act which came into force after 21st March 1976 and before the coming into force of this section

subsection (3) of the said section 16 shall not apply and shall be deemed never to have applied in relation to that recommendation during the continuance in force of the order.

1973 c. 41.

(3) Subsection (2) above shall have effect in relation to a recommendation made before the repeal of section 112(3) of the Fair Trading Act 1973 as if each reference to section 16(3) of the 1976 Act included a reference to that section.

(4) In the Table in paragraph 5 of Schedule 2 to the said Act of 1976 (time within which particulars of agreements and variations to be furnished under that Act)—

(*a*) there shall be added at the end of the first column of paragraph (*f*) the words "not being a variation which becomes subject to registration by virtue of an order under section 11 or 12 above"; and

(*b*) there shall be added at the end of the first column of paragraph (*f*) the words "other than a variation to which (*ii*) below applies"; and (*b*) arrange for the determination to be published in such manner as he considers most suitable for bringing it to the attention of any other person who, in his opinion, would have been affected by, or likely to have had an interest in, the investigation.

(10) As soon as practicable after the completion of an investigation under this section the Director shall, in such manner as he considers appropriate, publish a report stating, with reasons, whether in his opinion any course of conduct described in the report constituted or constitutes an anti-competitive practice and, if so—

(*a*) specifying the person or persons concerned and the goods or services in question; and

(*b*) stating, with reasons, whether he considers that it is appropriate for him to make a reference under section 5 below.

Undertakings in consequence of Director's reports.

4.—(1) Where a report is published under section 3 above stating, in accordance with subsection (10)(*b*) of that section, that it is appropriate for the Director to make a reference under section 5 below, the Director shall consider any representations in writing which are made to him by a person specified in the report as a person who was or is engaged in an anti-competitive practice and which contain proposals as to what should be done in consequence of the conclusions of the report so far as they relate to that person.

(2) Any such representations may include an undertaking by which the person who makes the representations agrees to be bound, if the undertaking is accepted by the Director, for a period specified in the representations.

(3) At any time before the Director makes a reference under section 5 below in relation to a report under section 3 above, the Director may, by notice given to the person concerned, accept an undertaking which is offered by that person by reference to that report.

(4) It shall be the duty of the Director—

(*a*) to arrange for any undertaking accepted by him under this section to be published in such manner as appears to him to be appropriate,

(*b*) to keep under review the carrying out of any such undertaking and from time to time to consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either the person concerned can be released from the undertaking or the undertaking needs to be varied or superseded by a new undertaking, and

(*c*) if it appears to him that the person by whom an undertaking was given has failed to carry it out, to give that person notice of that fact.

(5) If at any time the Director concludes under subsection (4)(*b*) above—

(*a*) that any person can be released from an undertaking, or

(*b*) that an undertaking needs to be varied or superseded by a new undertaking,

he shall give notice to that person stating that he is so released, or specifying the variation or, as the case may be, the new undertaking which in his opinion is required.

(6) Where a notice is served on any person under subsection (5) above specifying a variation or new undertaking, the notice shall state the change of circumstances by virtue of which the notice is served.

(7) Subject to subsection (8) below, the Director may at any time, by notice given to the person concerned—

(*a*) agree to the continuation of an undertaking in relation to which he has given notice under subsection (5) above specifying a variation or new undertaking, or

(*b*) accept a new or varied undertaking which is offered by that person as a result of such a notice.

(8) If the Director makes a reference under section 5 below in relation to a notice under subsection (5) above, he shall not, after the reference has been made, agree to the continuation of the undertaking in relation to which that notice was given or accept a new or varied undertaking which is offered as a result of that notice.

(9) The Secretary of State may by regulations prescribe the manner in which any notice is to be given under this section, and the evidence which is to be sufficient evidence of its having been given, and of its contents and authenticity.

Competition references.

5.—(1) In any case where—

(*a*) a report has been published under section 3 above stating, in accordance with subsection (10)(*b*) of that section, that it is appropriate for the Director to make a reference under this section and the Director has not accepted from each of the persons specified in the relevant report such undertaking or undertakings as, in his opinion, covers or cover every course of conduct which is described in the report as constituting an anti-competitive practice, or

(*b*) the Director has given notice to any person under section 4(4)(*c*) above with respect to an undertaking given by that person, or

(*c*) the Director has given notice to any person under section 4(5) above specifying either a variation of an undertaking or a new undertaking which is required and has neither accepted a new or varied undertaking from that person nor agreed upon the continuation of the original undertaking,

then, subject to the following provisions of this section, the Director may make a reference under this section to the Monopolies and Mergers Commission (in the following provisions of this Act referred to as a " competition reference ").

(2) In this section a competition reference is referred to—

(*a*) as a " report reference " if it is made by virtue of subsection (1)(*a*) above; and

(*b*) as a " notice reference " if it is made by virtue of subsection (1)(*b*) or subsection (1)(*c*) above.

(3) No competition reference may be made within the period of four weeks beginning with the relevant date nor, subject to subsection (4) below, may such a reference be made after the expiry of the period of eight weeks beginning on that date; and in this subsection " the relevant date " means—

(*a*) in the case of a report reference, the date on which was first published, in accordance with section 3(10) above, the report of the Director to which the reference relates; and

(*b*) in the case of a notice reference, the date on which notice was given as mentioned in subsection (1)(*b*) or, as the case may be, subsection (1)(*c*) above.

(4) If the Secretary of State so directs, subsection (3) above shall have effect in relation to a competition reference of a description specified in the direction as if for the period of eight weeks specified in that subsection there were substituted such longer period not exceeding twelve weeks as may be specified in the direction; but the Secretary of State shall not give a direction under this subsection unless, upon representations made to him by the Director, it appears to the Secretary of State that it would be appropriate in the case in question to allow the Director a longer period in which to negotiate one or more undertakings under section 4 above.

(5) In this section and section 6 below " the relevant report " means—

(*a*) in the case of a report reference, the report referred to in subsection (1)(*a*) above;

(*b*) in the case of a notice reference made by virtue of subsection (1)(*b*) above, the report by reference to which the person to whom the notice was given under section 4(4)(*c*) above gave the undertaking to which that notice refers; and

(*c*) in the case of a notice reference made by virtue of subsection (1)(*c*) above, the report by reference to which the person to whom the notice was given under section 4(5) above gave the undertaking which the Director proposes should be varied or superseded.

Scope of competition references.

6.—(1) In a competition reference the Director shall specify—

(*a*) the person or persons whose activities are to be investigated by the Commission (in this section referred to as the person or persons " subject to the reference "),

(*b*) the goods or services to which the investigation is to extend, and

(*c*) the course or courses of conduct to be investigated.

(2) The Director may not under subsection (1) above specify in a competition reference any person who is not specified in the relevant report nor any goods or services which are not so specified nor any course of conduct which is not described in that report but, subject to that and subsection (3) below, the Director may under subsection (1) above specify such person or persons, such goods or services and such course or courses of conduct as he considers appropriate.

(3) To the extent that the Director is of the opinion that an undertaking accepted by him under section 4 above covers the activities of any person specified in the relevant report, or any goods or services so specified, or any course of conduct described in that report, the Director shall exclude that person, those goods or services or, as the case may require, that course of conduct from the reference.

(4) In subsection (3) above the reference to an undertaking accepted by the Director under section 4 above does not include—

(*a*) an undertaking in respect of which notice has been served under subsection (4)(*c*) of that section, or

(*b*) an undertaking in respect of which the Director has given notice under subsection (5)(*b*) of that section specifying a new or varied undertaking, unless he has agreed upon its continuation with or without variation.

notice as required by section 3(2)(*a*) above also to the relevant Minister and on making any competition reference arising from that investigation or varying such a reference under section 6(6) above the Director shall send a copy of the reference or, as the case may be, the variation to the relevant Minister.

(5) In this section " the relevant Minister " means—

(*a*) in the case of a board administering a scheme under the said Act of 1958, the Minister who would have power to make an order under section 19 of that Act in relation to that board or the board administering that scheme, and

(*b*) in the case of a board administering a scheme under the said Act of 1964, the Department of Agriculture for Northern Ireland.

General provisions about references and investigations

General provisions as to reports.

16.—(1) In making any report under this Act the Commission or the Director shall have regard to the need for excluding, so far as that is practicable—

(*a*) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Commission or the Director, as the case may be, seriously and prejudicially affect the interests of that individual, and

(*b*) any matter which relates specifically to the affairs of a body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Commission or the Director, as the case may be, seriously and prejudicially affect the interests of that body, unless in the opinion of the Commission or the Director, as the case may be, the inclusion of that matter relating specifically to that body is necessary for the purposes of the report.

(2) For the purposes of the law relating to defamation, absolute privilege shall attach to any report of the Commission or of the Director under this Act.

Laying before Parliament and publication of reports.

17.—(1) Subject to subsection (2) below, the Secretary of State shall lay a copy of any report made to him under section 8(1), 11(10) or 13(5) above before each House of Parliament and shall arrange for the report to be published in such manner as appears to him appropriate.

(2) The Secretary of State shall not lay a copy of a report made to him under section 8(1) or 11(10) above before either House of Parliament unless at least twenty-four hours before doing so he has transmitted to every person specified in the reference a copy of the report in the form in which it is laid (or by virtue of subsection (3) below is treated as being laid) before each House of Parliament.

(3) If a report made to him under section 8(1), 11(10) or 13(5) above is presented by command of Her Majesty to either House of Parliament otherwise than at or during the time of a sitting of that House, the presentation of the report shall for the purposes of this section be treated as the laying of a copy of it before that House by the Secretary of State.

(4) If it appears to the Secretary of State that the publication of any matter in a report made to him under section 8(1), 11(10) or 13(5) above would be against the public interest, he shall exclude that matter from the copies of the report as laid before Parliament and from the report as published under this section.

(5) Without prejudice to subsection (4) above, if the Secretary of State considers that it would not be in the public interest to disclose—

(*a*) any matter contained in a report made to him under section 8(1), 11(10) or 13(5) above relating to the private affairs of an individual whose interests would, in the opinion of the Secretary of State, be seriously and prejudicially affected by the publication of that matter, or

(*b*) any matter contained in such a report relating specifically to the affairs of a particular person whose interests would, in the opinion of the Secretary of State, be seriously and prejudicially affected by the publication of that matter,

the Secretary of State shall exclude that matter from the copies of the report as laid before Parliament and from the report as published by virtue of subsection (1) above.

(6) Any reference in sections 9, 10 or 12 above to a report of the Commission shall be construed as a reference to the report in the form in which copies of it are laid (or by virtue of subsection (3) of this section are treated as having been laid) before each House of Parliament under this section.

Information and advice about operation of Act.

18. The Director shall arrange for the dissemination in such form and manner as he considers appropriate of such information and advice as it may appear to him expedient to give the public in the United Kingdom about the operation of this Act.

Restriction on disclosure of information.

19.—(1) Subject to subsection (2) below, no information obtained under or by virtue of the preceding provisions of this Act about any business shall, so long as the business continues to be carried on, be disclosed without the consent of the person for the time being carrying it on.

(2) Subsection (1) above does not apply to any disclosure of information made—

(*a*) for the purpose of facilitating the performance of any functions under this Act or any of the enactments specified in subsection (3) below of any Minister, any Northern Ireland department, the head of any such department, the Director, the Commission or a local weights and measures authority in Great Britain; or

(*b*) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings; or

(*c*) for the purposes of any civil proceedings brought under or by virtue of this Act or any of the enactments specified in subsection (3) below; or

(*d*) in pursuance of a Community obligation.

(3) The enactments referred to in subsection (2) above are—

1968 c. 29. (*a*) the Trade Descriptions Act 1968;

1973 c. 41. (*b*) the Fair Trading Act 1973;

1974 c. 39. (*c*) the Consumer Credit Act 1974;

1976 c. 34. (*d*) the Restrictive Trade Practices Act 1976;

1976 c. 53. (*e*) the Resale Prices Act 1976; and

1979 c. 38. (*f*) the Estate Agents Act 1979.

(4) For the purpose of enabling information obtained under certain other enactments to be used for facilitating the performance of functions under this Act, the following amendments shall be made in provisions respecting disclosure of information, namely—

1958 c. 47. (*a*) at the end of paragraph (*aa*) of the proviso to section 47(2) of the Agricultural Marketing Act 1958 there shall be added the words " or the Competition Act 1980 ";

1964 c. 13. (N.I.). (*b*) at the end of paragraph (*aaa*) of section 23(2) of the Agricultural Marketing Act (Northern Ireland) 1964 there shall be added the words " or the Competition Act 1980 ";

(*c*) at the end of paragraph (*a*) of subsection (2) of section 133 of the Fair Trading Act 1973 there shall be added the words " the Competition Act 1980, or ";

(*d*) in paragraph (*a*) of subsection (3) of section 174 of the Consumer Credit Act 1974 after the words " Estate Agents Act 1979 " there shall be added the words " or the Competition Act 1980 ";

(*e*) at the end of paragraph (*a*) of subsection (1) of section 41 of the Restrictive Trade Practices Act 1976 there shall be added the words " or the Competition Act 1980 "; and

(*f*) in paragraph (*a*) of subsection (3) of section 10 of the Estate Agents Act 1979 after the words " Restrictive Trade Practices Act 1976 " there shall be added the words " or the Competition Act 1980 ". 1979 c. 38.

(5) Nothing in subsection (1) above shall be construed—

(*a*) as limiting the matters which may be included in any report of the Director or of the Commission made under this Act; or

(*b*) as applying to any information which has been made public as part of such a report or as part of the register kept for the purposes of the Act of 1976.

(6) Any person who discloses information in contravention of this section shall be liable on summary conviction to a fine not exceeding the statutory maximum and, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

(7) In subsection (6) above " the statutory maximum ", in relation to a fine on summary conviction, means—

(*a*) in England and Wales and Northern Ireland, the prescribed sum within the meaning of section 28 of the Criminal Law Act 1977 (at the passing of this Act £1,000); and 1977 c. 45.

(*b*) in Scotland, the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975 (at the passing of this Act £1,000); 1975 c. 21.

and for the purposes of the application of this definition in Northern Ireland, the provisions of the Criminal Law Act 1977 which relate to the sum mentioned in paragraph (*a*) above shall extend to Northern Ireland.

Grants

Power to make grants to certain bodies.

20. If the Secretary of State is satisfied that—

(*a*) the general advice of any body on matters of interest to users of goods and services would be useful to him in the formulation of policy concerning those matters and

(*b*) the body disseminates information of such interest,

he may make a grant to the body on such terms as he thinks fit.

(2) If it appears to the Secretary of State that any other Minister has functions directly relating to the person specified in the reference or, in the case of a reference only concerning the activities of the person in a part of the United Kingdom, functions directly relating to the person in respect of his activities in that part, he shall send a copy of the report of the Commission on the reference to that Minister; and in subsection (3) below " the relevant Minister " means—

(*a*) in a case where it appears to the Secretary of State that any Minister (including himself) has such functions, that Minister, and

(*b*) in a case where it appears to the Secretary of State that no Minister has such functions, the Secretary of State.

(3) If—

(*a*) the relevant Minister considers it appropriate for the purpose of remedying or preventing what he considers are the adverse effects of the course of conduct specified in the report of the Commission as operating against the public interest, and

(*b*) the person specified in the reference does not fall within paragraph (*d*) of section 11(3) above and is not a subsidiary of a body falling within that paragraph,

he may by order direct the person to prepare within such time, if any, as may be specified in the order a plan for remedying or preventing such of those effects as are so specified; but where there is more than one relevant Minister no such order shall be made except by all the relevant Ministers acting jointly and where none of the relevant Ministers is the Secretary of State no such order shall be made except after consultation with him.

(4) It shall be the duty of a person to whom a direction is given under subsection (3) above to prepare such a plan as is mentioned in that subsection and to send a copy of that plan to the Minister or Ministers by whom the order containing the direction was made who shall lay it before Parliament; and, in a case where the plan involves the use by a body of its powers in relation to any subsidiary within the meaning of the Companies Act 1948, the plan shall specify the manner in which the body proposes using those powers. 1948 c. 38.

(5) Whether or not an order has been or may be made under subsection (3) above, the Secretary of State may, if he considers it appropriate for the purpose of remedying or preventing what he considers are the adverse effects of the course of conduct specified in the report of the Commission as operating against the public interest, by order exercise one or more of the powers

specified in Part I, excluding paragraph 10, of Schedule 8 to the Fair Trading Act 1973, to such extent and in such manner as he considers apropriate. 1973 c. 41.

(6) In the Fair Trading Act 1973—

(*a*) section 90 (general provisions as to orders under section 56 etc.) except subsections (2) and (3),

(*b*) section 91(2) (publication of proposals to make an order),

(*c*) section 93 (enforcement of certain orders), and

(*d*) Part I (except paragraph 10) of Schedule 8 (powers exercisable by orders under section 56 etc.),

shall have effect as if any reference in those provisions to an order under section 56 of that Act included a reference to an order under subsection (5) above.

Investigations of prices directed by Secretary of State.

13.—(1) If so directed by the Secretary of State, the Director shall carry out an investigation into any price specified in the direction with a view to providing the Secretary of State with information of a description so specified relating to that price: but the giving of a direction under this section shall not affect the power of the Director to initiate an investigation under section 3 above (subject to subsection (5) of that section) into a course of conduct pursued by any person by or to whom the price specified in the direction is charged.

(2) The Secretary of State shall not give a direction under this section unless he is satisfied that the price in question is one of major public concern and, in this connection, he shall have regard to whether—

(*a*) the provision or acquisition of the goods or services in question is of general economic importance; or

(*b*) consumers are significantly affected, whether directly or indirectly, by the price.

(3) The Secretary of State may at any time vary or revoke a direction given under this section, but he shall not exercise his power to vary such a direction unless he is satisfied that the direction as proposed to be varied would be such as he could have given, having regard to subsection (2) above.

(4) On giving a direction under this section or on varying or revoking such a direction, the Secretary of State shall arrange for the direction, variation or revocation to be published in such manner as he considers most suitable for bringing it to the attention of persons who, in his opinion, would be affected by, or be likely to have an interest in, the investigation to which the direction, variation or revocation relates.

(5) A direction under this section shall specify a period within which the Director is to report on his investigation to the Secretary of State, and, before the expiry of the period specified in the direction (whether as originally given or as varied under subsection (3) above), the Director shall make a report on the investigation to the Secretary of State—

(*a*) stating his findings of fact which are material to the information which he is required to provide in accordance with the direction ; and

(*b*) containing such additional observations (if any) as the Director considers should be brought to the attention of the Secretary of State as a result of the investigation.

(6) Subsections (7) and (8) of section 3 above shall have effect in relation to an investigation under this section as they have effect in relation to an investigation under that section.

Patents and agricultural schemes

Applications by Crown concerning patents.
1977 c. 37.

14.—(1) After subsection (2) of section 51 of the Patents Act 1977 (application by Crown in cases of monopoly or merger) there shall be inserted the following subsection:—

" (2A) Where—

(*a*) on a reference under section 5 of the Competition Act 1980, a report of the Commission, as laid before Parliament, contains conclusions to the effect that—

(i) any person was engaged in an anti-competitive practice in relation to a description of goods which consist of or include patented products or in relation to a description of services in which a patented product or process is used, and

(ii) that practice operated or might be expected to operate against the public interest ; or

(*b*) on a reference under section 11 of that Act, such a report contains conclusions to the effect that—

(i) any person is pursuing a course of conduct in relation to such a description of goods or services, and

(ii) that course of conduct operates against the public interest,

the appropriate Minister or Ministers may, subject to subsection (3) below, apply to the comptroller for relief under subsection (5A) below in respect of the patent.".

(2) In subsection (3) of that section (publication of details of proposed applications under subsection (1) or (2) of that section) for the words " subsection (1) or (2) " there shall be substituted the words " subsection (1), (2) or (2A) ".

(3) After subsection (5) of that section there shall be inserted the following subsection:—

" (5A) If on an application under subsection (2A) above it appears to the comptroller that the practice or course of conduct in question involved or involves the imposition of any such condition as is mentioned in paragraph (*a*) of subsection (4) above or such a refusal as is mentioned in paragraph (*b*) of that subsection, the comptroller may by order cancel or modify any such condition or may, instead or in addition, make an entry in the register to the effect that licences under the patent are to be available as of right.".

Agricultural schemes: special provisions.
1958 c. 47.

15.—(1) In subsection (1) of section 19A of the Agricultural Marketing Act 1958 (power of Minister to make orders under section 19 of that Act where report of Commission on monopoly reference contains certain conclusions) after the words " Fair Trading Act 1973 " there shall be inserted the words " or section 8 or 11 of the Competition Act 1980 ".

(2) The Secretary of State shall not—

(*a*) give a direction under subsection (5) of section 3 above or a consent under subsection (9) of that section in relation to an investigation under that section, or

(*b*) give a direction under section 7(2) or (3) above in relation to a competition reference, or

(*c*) make or vary a reference under section 11 above,

in a case where the person to whom or to whose conduct or activities the investigation or reference relates falls within section 11(3)(*d*) above unless he has first consulted the relevant Minister.

1964 c. 13. (N.I.).

(3) Where the report of the Commission on a competition reference concludes that a board administering a scheme under the said Act of 1958 or the Agricultural Marketing Act (Northern Ireland) 1964 was engaging in an anti-competitive practice which operated or might be expected to operate against the public interest, the Secretary of State shall not exercise any function under section 9 above except acting jointly with the relevant Minister and, in its application in such a case, section 9 above shall have effect as if the references in it to the Secretary of State (except the second reference in subsection (6)) were references to both the Secretary of State and the relevant Minister.

(4) Before carrying out an investigation under section 3 above into any course of conduct being pursued by a person falling within section 11(3)(*d*) above the Director shall give

(*c*) after paragraph (*i*) there shall be added the following paragraph:—

" (*ii*) Variation of an agreement being a variation which extends or adds to the restrictions accepted or information provisions made under the agreement and which becomes subject to registration by virtue of the revocation or variation of an order made under section 11 or 12 above.	Within 1 month from the day on which the variation becomes so subject."

Amendments to s. 19 of Restrictive Trade Practices Act 1976. 1976 c. 34.

28.—(1) In section 19(1) of the Restrictive Trade Practices Act 1976 (which provides amongst other things that there is a presumption that a restriction or information provision is against the public interest unless the Court is satisfied the removal of it would deny benefits to the public as purchasers, consumers or users of any goods)—

(*a*) the word " vendors " shall be inserted before the word " purchasers " in both places where it occurs, and

(*b*) the words " or other property " shall be inserted—

(i) after the words " users of any goods " in paragraph (*b*), and

(ii) after the words " users of goods " in the words following paragraph (*b*).

(2) In subsection (2) of that section (" purchasers ", " consumers " and " users " to include persons purchasing, consuming and using for trade, business and public purposes) the word " ' vendors ' " shall be inserted before the word " ' purchasers ' " and the word " selling " shall be inserted before the word " purchasing ".

Exemption of certain undertakings from Restrictive Trade Practices Acts. 1973 c. 41.

29.—(1) The Restrictive Trade Practices Act 1976 shall not apply in relation to any agreement by virtue only of restrictions being accepted or information provisions being made under it which are comprised in undertakings which have been—

(*a*) given pursuant to section 88 of the Fair Trading Act 1973, or

(*b*) certified by the Secretary of State under paragraph 9 of Schedule 11 to the said Act of 1973, or

(*c*) accepted under section 4 or 9 above.

1956 c. 74.

(2) The said Act of 1976 and Part I of the Restrictive Trade Practices Act 1956 shall be deemed never to have applied in relation to any agreement by virtue only of restrictions being accepted or information provisions being made under it which are comprised in undertakings falling within paragraph (*a*) or (*b*) of subsection (1) above.

Exemption of copyright agreements from Restrictive Trade Practices Acts. 1976 c. 34.

30.—(1) The following paragraph shall be inserted in Schedule 3 of the Restrictive Trade Practices Act 1976 (excepted agreements) after paragraph 5:—

" *Copyrights*

5A.—(1) This Act does not apply to—

(*a*) a licence granted by the owner or a licensee of any copyright;

(*b*) an assignment of any copyright; or

(*c*) an agreement for such a licence or assignment;

being a licence, assignment or agreement such as is described in sub-paragraph (2) or sub-paragraph (3) below.

(2) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part II of this Act one under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made except in respect of the work or other subject-matter in which the copyright subsists or will subsist.

(3) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part III of this Act one under which—

(*a*) in the case of an order under section 11 above, no restrictions in respect of matters specified in the order for the purposes of subsection (1)(*b*) of that section are accepted except in respect of the work or other subject-matter in which the copyright subsists or will subsist; or

(*b*) in the case of an order under section 12 above, no information provision with respect to matters specified in the order for the purposes of subsection (1)(*b*) of that section is made except in respect of that work or other subject-matter.

(4) In relation to Scotland references in this paragraph to an assignment mean an assignation."

1956 c. 74.

(2) The said Act of 1976 and Part I of the Restrictive Trade Practices Act 1956 shall be deemed never to have applied in relation to—

(*a*) a licence granted by the owner or a licensee of any copyright,

(*b*) an assignment or assignation of any copyright, or

(*c*) an agreement for such a licence, assignment or assignation,

by virtue only of restrictions being accepted or information provisions being made under it in respect of the work or other subject-matter in which the copyright subsists or will subsist.

Supplementary

Orders and regulations.

31.—(1) Any power of the Secretary of State to make orders or regulations under this Act shall be exercisable by statutory instrument.

(2) An order under section 2(3) above shall be laid before Parliament and shall cease to have effect (but without prejudice to the making of a new statutory instrument) unless, within forty days of the making of the order, it is approved by a resolution of each House of Parliament; and in reckoning any period of forty days for the purposes of this subsection, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(3) Any statutory instrument containing regulations under this Act or an order under section 10, 11(4) or 12(3) or (5) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) No order shall be made under section 24(1) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

Financial provisions.

32.—(1) There shall be defrayed out of moneys provided by Parliament—

(*a*) any expenses incurred by the Secretary of State in consequence of the provisions of this Act; and

(*b*) any increase attributable to this Act in the sums payable out of moneys so provided under any other Act.

1973 c. 41.

(2) In section 135(2)(*c*) of the Fair Trading Act 1973 (which provides for any expenses duly incurred by the Director or his staff in consequence of the provisions of that Act to be defrayed out of moneys provided by Parliament) for the words " of this Act " there shall be substituted the words " of this or any other Act ".

Short title, interpretation, repeals, commencement and extent.

33.—(1) This Act may be cited as the Competition Act 1980.

(2) Except in so far as any provision of this Act otherwise provides, section 137 of the Fair Trading Act 1973 (general interpretation provisions) shall have effect in relation to sections 2 to 24 above as if those sections were contained in that Act; and for ease of reference the expressions which are used in those

sections and have meanings assigned to them by the said sectio
137 are—

" the Act of 1976 "
" agreement "
" business "
" the Commission "
" consumer "
" the Director "
" enactment '
" goods "
" group "
" group of inter-connected bodies corporate "
" inter-connected bodies corporate "
" Minister "
" monopoly situation "
" practice "
" price "
" services "
" supply "
" the supply of services ".

(3) Section 43 of the Restrictive Trade Practices Act 1976 (interpretation and construction) shall have effect in relation to sections 25 to 30 above as if those sections were contained in that Act; and for ease of reference the expressions which are used in those sections and have meanings assigned to them by the said section 43 are—

1976 c. 34.

" agreement "
" the Court "
" the Director "
" goods "
" information provision "
" restriction "
" services supply association "
" supply ".

(4) So much of the Counter-Inflation Act 1973 as remains in force immediately before the passing of this Act shall cease to have effect and, in consequence of that and of the preceding provisions of this Act, the enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

1973 c. 9.

(5) This Act shall come into operation on such day as the Secretary of State may by order appoint, and different days may be so appointed for different provisions and for different purposes.

(6) An order under this section appointing a day for the coming into operation of any provision of Schedule 2 to this Act may contain such savings with respect to the operation of that provision and such incidental and transitional provisions as appear to the Secretary of State to be appropriate.

(7) Any reference in any provision of this Act to the appointed day shall be construed as a reference to the day appointed or, as the case may require, first appointed under this section for the coming into operation of that provision.

(8) This Act extends to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 1(3).

SUPPLEMENTARY PROVISIONS IN CONNECTION WITH DISSOLUTION OF PRICE COMMISSION

1. Any liability in respect of pensions, allowances or gratuities which after the end of the winding-up period would, but for the dissolution of the Price Commission, have arisen or existed as a liability of the Commission to any of their officers or servants, or former officers or servants, shall instead be a liability of the Paymaster General.

2. Any legal proceedings to which the Price Commission are a party may be continued after the end of the winding-up period by or in relation to the Secretary of State.

3. A certificate signed by or on behalf of the Secretary of State that any instrument purporting to be made or issued by or on behalf of the Price Commission was so made or issued shall be conclusive evidence of that fact; and any document purporting to be such a certificate shall be deemed to be such a certificate unless the contrary is shown.

4. Every contract, agreement, licence and authority, whether written or not, and every deed, bond, instrument and document made before the expiry of the winding-up period and still in effect at that time which relates to property, rights or obligations of the Price Commission which are vested in the Secretary of State by section 1(3) of this Act shall continue in effect but subject to the following modifications, so far as they are applicable—

(*a*) if the Price Commission are a party thereto, the Secretary of State shall be substituted as that party;

(*b*) for a reference (however worded and whether express or implied) to the Price Commission there shall, as respects anything falling to be done or occurring after the expiry of the winding-up period, be substituted a reference to the Secretary of State;

(*c*) for a reference (however worded and whether express or implied) to the members or any member, or to any officer or officers of the Price Commission there shall be substituted, as respects anything done or falling to be done or occurring after the expiry of the winding-up period, a reference to such officer or officers as the Secretary of State shall appoint for the purpose; and

(*d*) for a reference to the office or place of business of the Price Commission there shall be substituted a reference to the principal offices of the Department of Trade.

Section 33(4).

SCHEDULE 2

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
1973 c. 9.	The Counter-Inflation Act 1973.	Parts I, II and V, so far as unrepealed.
1974 c. 24.	The Prices Act 1974.	In the Schedule, in paragraph 11, the words " or of the Price Commission ".
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Part II of Schedule 1, the words " The Price Commission ".
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Part II of Schedule 1, the words " The Price Commission ".
1975 c. 57.	The Remuneration, Charges and Grants Act 1975.	In section 2, subsection (4), in subsection (5) paragraph (*b*) and the word " or " immediately preceding it. Section 3.
1977 c. 33.	The Price Commission Act 1977.	The whole Act, except sections 16 and 17.
1978 c. 54.	The Dividends Act 1978.	The whole Act.
1979 c. 1.	The Price Commission (Amendment) Act 1979.	The whole Act.